placards and in order to ensure that the placard language requirement remains current with FWCPA authority, this rule requires placard language stating that violators are subject to substantial civil penalties and/or criminal sanctions including fines and imprisonment. Owners and operators will continue to be allowed to use placards meeting existing Coast Guard requirements for the lifetime of the placards.

Because this action would merely conform the language required to be displayed on ship's placards with revised statutory authority, this action is considered to be administrative and procedural in nature. Accordingly, under 5 U.S.C. 553(b)(3)(B) notice and opportunity for public comment are unnecessary and, in accordance with 5 U.S.C. 553(d)(3), good cause exists to publish this action as a final rule effective upon publication in the **Federal Register**.

Regulatory Evaluation

This rule is not a significant regulatory action under Executive Order 12866 and is not significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. Because existing placards may be used for the lifetime of the placards, there would be no economic impact on the industry.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). This rule does not require a general notice of proposed rulemaking and, therefore, is exempt from the regulatory flexibility requirements. Although exempt, the Coast Guard has reviewed this rule for potential impact on small entities.

This rule merely revises the language required to be posted on placards aboard certain ships to conform with revised statutory authority. Existing placards may be used for the lifetime of the placard. This rule has no economic impact on industry. Therefore, the Coast Guard's position is that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no new collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

FWPCA explicitly preserves the authority of any State to impose its own requirements or standards with respect to the liability of persons in the removal of oil (33 U.S.C. 1321(o)). The State's authority to regulate in this area is preserved as long as State law is not in direct conflict with Federal law.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule is editorial and administrative in nature and clearly has no impact on the environment. A Determination of Categorical Exclusion is available in the docket for inspection or copying where indicated under "**ADDRESSES.**"

List of Subjects in 33 CFR Part 155

Hazardous substances; Oil pollution; Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 155 as follows:

PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

1. The authority citation for part 155 is revised to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1)(C); E.O. 12777, 56 FR 54757, 49 CFR 1.46. Sections 155.100 through 155.130, 155.350 through 155.400, 155.430, 155.440, and 155.470 also issued under 33 U.S.C. 1903(b).

2. In § 155.450, paragraph (a) is revised to read as follows:

§ 155.450 Placard.

(a) A ship, except a ship of less than 26 feet in length, must have a placard of at least 5 by 8 inches, made of durable material fixed in a conspicuous place in each machinery space, or at the bilge and ballast pump control station, stating the following:

Discharge of Oil Prohibited

The Federal Water Pollution Control Act prohibits the discharge of oil or oily waste into or upon the navigable waters of the United States, or the waters of the contiguous zone, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States, if such discharge causes a film or discoloration of the surface of the water or causes a sludge or emulsion beneath the surface of the water. Violators are subject to substantial civil penalties and/or criminal sanctions including fines and imprisonment.

* * * * *

Dated: October 7, 1993.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 93-29038 Filed 11-24-93; 8:45 am]

BILLING CODE 4910-14-M.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 63

[AD-FRL-4804-7]

Approval of State Programs and Delegation of Federal Authorities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is promulgating regulations to provide guidance, relating to approval of State programs, that the EPA is required to publish under section 112(l) of the Clean Air Act as amended in 1990 (Act). Section 112(l)(2) of the Act requires the EPA to publish guidance useful to States in developing programs for implementing and enforcing emission standards and other requirements for hazardous air pollutants (HAP's) and guidance concerning requirements for the prevention and mitigation of accidental releases of toxic substances into the ambient air. This final rule contains guidance specifically relating to the approval of rules or programs that States can implement and enforce in place of certain Federal section 112 rules, and the partial or complete delegation of Federal authorities and responsibilities associated therewith. Submission of rules or programs by the States under this subpart is entirely voluntary. States seeking to implement and enforce some provisions of their own programs in lieu of federally promulgated hazardous air pollutant standards under section 112 need to obtain approval under this final rule. Once granted approval, State rules and applicable part 70 operating permit conditions resulting from approved

A-92-46- over

(1) Take all steps necessary to improve coordination among the criminal investigative agencies of the Department, both within the United States and abroad;

(2) Assure, to the extent appropriate, consistent operational guidelines for the criminal investigative agencies of the Department;

(3) Establish procedures, structures and mechanisms for coordinating the collection and dissemination of intelligence relating to the Department's law enforcement responsibilities;

(4) Establish procedures and policies relating to procurement for the criminal investigative agencies of the Department, including but not limited to procurement of communications and computer systems;

(5) Determine and establish procedures for the coordination of all automation systems;

(6) Determine and establish plans to ensure the effective deployment of criminal investigative agency task forces;

(7) Establish procedures for coordinating the apprehension of fugitives;

(8) Establish programs to coordinate training among the criminal investigative agencies of the Department;

(9) Provide advice to the Attorney General and the Deputy Attorney General on all investigative policies, procedures and activities that warrant uniform treatment or coordination among the criminal investigative agencies of the Department;

(10) Provide advice to the Attorney General and the Deputy Attorney General on the budgetary and resource requests of the criminal investigative agencies of the Department;

(11) Perform such other functions as may be necessary for the effective policy-level coordination of criminal investigations by the criminal investigative agencies of the Department, particularly with respect to drug trafficking, fugitive apprehension, violence, and related areas, and for the elimination of waste and duplication in these functions.

(12) Perform such special duties as may be assigned by the Attorney General or the Deputy Attorney General from time to time.

(c) *Cooperation.* Officials of the Federal Bureau of Investigation, the Drug Enforcement Administration, the United States Marshals Service, the Immigration and Naturalization Service and all other components of the Department that may be requested by the Director of Investigative Agency Policies shall provide such information as the Director may request.

(d) *Review.* Prior to making any decision having a significant impact on any criminal investigative agency of the Department, the Director shall consult with the head of such agency, or the designee of the head of such agency. Any head of a criminal investigative agency shall have an opportunity to seek review of any decision of the Director by the Deputy Attorney General or the Attorney General.

(e) *Scope.* Nothing in this section shall be interpreted to alter or diminish the responsibilities of the Department's criminal investigative agencies, or of other components of the Department, including the Criminal Division and the United States Attorneys, in the investigation and prosecution of violations of federal criminal law.

(f) *Reservation.* This policy is set forth solely for the purpose of internal Department of Justice guidance. It is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, that are enforceable at law by any party in any matter, civil or criminal, nor does it place any limitations on otherwise lawful investigative or litigative prerogatives of the Department of Justice.

Dated: November 18, 1993.

Janet Reno,

Attorney General.

[FR Doc. 93-28947 Filed 11-24-93; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 155

[CGD 93-054]

RIN 2115-AE55

Oil Pollution Placard Language

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising the placard language required to be posted on ships of 26 feet in length or greater stating the Federal Water Pollution Control Act's (FWPCA) oil discharge prohibition and the penalty for violation of that prohibition. Because the Oil Pollution Act of 1990 amended the penalty provisions of FWPCA, the required placard language is outdated. This rule revises the required placard language to reflect current FWPCA authority.

EFFECTIVE DATE: November 26, 1993.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G-LRA, 3406), U.S. Coast Guard Headquarters, room 3406, 2100 Second Street, SW., Washington, DC 20593-0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: Lieutenant Jonathan C. Burton, Project Manager, Division of Marine Environmental Protection (G-MEP-1), (202) 267-6714.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in the drafting of this rule are Lieutenant Jonathan C. Burton, Project Manager, Division of Marine Environmental Protection, and Ms. Helen G. Boutrous, Project Counsel, Office of Chief Counsel.

Background and Purpose

Section 311 of the Federal Water Pollution Control Act (FWPCA) prohibits the discharge of oil into the navigable waters of the United States or the waters of the contiguous zone and specifies penalties for violation of that prohibition (33 U.S.C. 1321(b)). Section 155.450 of title 33 of the Code of Federal Regulations requires ships of 26 feet in length or greater to post a placard that states FWPCA's oil discharge prohibition and the penalty for violation of that prohibition. However, the Oil Pollution Act of 1990 (OPA 90) amended FWPCA by increasing the maximum amount of criminal and civil penalties that may be assessed under FWPCA (Pub. L. 101-380). Consequently, the placard language required by § 155.450 stating that violators are subject to a penalty of $5,000 has become outdated. The OPA 90 amendments to FWPCA provide for fines, or imprisonment, or both. The amendments also provide for Class I administratively assessed penalties of up to $10,000 per violation, not to exceed $25,000, class II administratively assessed penalties of up to $10,000 per day for each day during which the violation continues, not to exceed $125,000, and judicially assessed civil penalties of up to $25,000 per day of violation or up to $1,000 per barrel of oil discharged.

Discussion of Amendments

This rule would revise the required placard language to accurately reflect the penalty provisions of FWCPA. In consideration of space limitations on

State programs would be federally enforceable and would substitute for the otherwise applicable Federal requirements within a State or local jurisdiction.

EFFECTIVE DATE: The guidance announced herein takes effect on December 27, 1993.

ADDRESSES: *Docket.* Supporting information used in developing the proposed and final rules is contained in Docket No. A–92–46. The docket is available for public inspection and copying from 8:30 a.m.–12 p.m. and 1:30 p.m.–3:30 p.m., Monday through Friday, at the EPA's Air Docket Section, Waterside Mall, Room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For general information on today's final rule, contact Sheila Q. Milliken, Pollutant Assessment Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–2625.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

This preamble provides an overview of criteria and procedures for approval by the EPA of State rules and programs that implement and enforce section 112 of the Act.

The preamble also provides a detailed discussion of the changes made to the proposed regulation. Section I discusses the background and purpose of today's rule. Section II provides information regarding public involvement in the rulemaking during the public comment period following proposal. A summary of today's rule is found in section III which gives a brief overview of the regulatory requirements. A discussion of the significant comments and resulting regulatory changes from the proposed requirements is detailed in section IV. The discussion of comments and changes to the rule are found in this section in the sequence of the subpart E rule. In the preamble of the proposed rule, the EPA explained the basis for its various proposed positions. Where the proposed regulation has not been changed in the final rule, the EPA continues to rely on the rationale provided in the proposal notice. In addition, clarification or explanation has been included in those places where comments indicated it would be useful. Section V discusses additional guidance required by section 112(l). Finally, section VI covers administrative requirements necessary for promulgation of this rule.

The EPA proposed these regulations to be codified in 40 CFR part 63 on May 19, 1993 (58 FR 29296). The comment period for the proposal ended on July 6, 1993. The EPA received comments from 27 commenters on the proposed rule during the public comment period. The comments have been carefully considered, and where determined to be appropriate by the Administrator, changes have been made in the proposed rule. Copies of these comments appear in the docket for this action.

The major comments and responses are summarized in this preamble. A separate document providing additional responses to comments on the proposal is included in the docket.

I. Background and Purpose

Many States have developed or are developing air toxics programs under State authorities. The Congress was very much aware of the States' air toxics programs in the course of developing the 1990 Amendments. (See, e.g. S. Rep. No. 228, 101st Cong. 1st Sess. 192 (1989) (herein after S. Rep.).) These programs, developed to address specific State needs, may differ from Federal rules being developed by the EPA under section 112 of the 1990 Amendments for the control of emissions of HAP's and other programs. Existing State programs may result in controls that are more stringent than, equivalent to, or less stringent than controls resulting from corresponding Federal standards.

From discussions with States and other interested parties, the EPA has learned that some States want to continue to implement and enforce the requirements of their own air toxics and accidental release prevention programs even though new 1990 Amendments requirements under section 112 relating to hazardous air pollutants will be issued. The prospect of simultaneous implementation and enforcement of both Federal and State air toxics and accidental release prevention programs in some States has caused concerns to be expressed regarding the possible effects on the States and the regulated community. A primary concern is that section 112 could lead to "dual regulation", a situation in which sources are subject to differing State and Federal program requirements. Dual regulation may burden regulated sources and permitting and enforcement agencies for several reasons. First, permits resulting from dual regulation are necessarily longer and more expensive to develop and approve due to the need to specify separate sets of operating conditions derived from both Federal and State regulations. Second, compliance and enforcement costs may be greater because of two sets of conditions that must be enforced. Third, permit conditions that result from dual regulation may not always be complementary and may even be fundamentally inconsistent in instances where the Federal and State programs may require measures that are technically incompatible. In this latter instance, it may be difficult or impossible for a source to employ simultaneously the control requirements mandated by both Federal and State regulations.

To avoid dual regulation and the attendant complications, as well as to preserve the integrity of their own air toxics and accidental release prevention programs, some States have contended that section 112(l) of the 1990 Amendments authorizes the EPA to delegate authority to the States to implement and enforce their rules or programs in lieu of Federal rules under section 112. Many States have expressed this argument to the EPA through a series of discussions and informal conversations prior to proposal. The EPA agrees that section 112(l) authorizes the EPA to delegate certain section 112 authorities to States. Today's final rule offers guidance intended to assist States (and local agencies) in submitting rules and programs for approval by the EPA. After approval by the EPA, States may implement and enforce their rules and

programs in place of certain Federal rules promulgated under section 112, with the EPA approved State rules and programs being federally enforceable. Section 112(l) also provides that any delegation of the EPA's authorities under today's rule shall not include the authority to set standards or other emission limitations or requirements less stringent than those promulgated by the EPA under the 1990 Amendments. The regulation in today's notice, along with guidance for review of high-risk point sources fulfills the requirement for the EPA to publish guidance under section 112(l)(2). See section V of this preamble for further discussion of the high-risk point source program guidance. In addition, today's final rule provides a procedural mechanism for approval and delegation of State requirements that are exactly as promulgated by the EPA under section 112.

Today's final rule seeks to achieve the goal of allowing the EPA and the States to work together to minimize potential program redundancies and inconsistencies and to reduce the costs and time involved in permit review and issuance. At the same time today's rule will assure that all sources of hazardous air pollutants and hazardous substances listed under section 112(r) meet emission standards and other requirements that are no less stringent than corresponding Federal requirements.

Today's notice also addresses the requirement in section 112(l)(2) that the EPA include as an element of the guidance "an optional program begun in 1986 for the review of high-risk point sources of air pollutants including, but not limited to, hazardous air pollutants listed pursuant to subsection (b)." Pursuant to that provision, the EPA has developed guidance to assist State agencies in establishing a high risk point source program that can work within and beyond the context of section 112. Enabling Guidance to provide further details on the requirements of section 112(l) and information about various technical assistance activities, including an air toxics clearinghouse is published concurrent with promulgation of this rule.

II. Public Participation

A public hearing was held on the proposed rule in Research Triangle Park, North Carolina on June 22, 1993 to provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed rule. This hearing was open to the public, and each attendee was given an opportunity to comment on the proposed rule. The significant changes to the regulations resulting from public comments are described in this preamble. A summary of all public comments and the EPA responses and transcripts of the public hearing are contained in the docket.

III. Summary of Final Rule

Today's final regulations establish guidance for the EPA approval of State (or local, Tribal or Territorial) air toxics control rules (i.e., promulgated regulations) or programs (i.e., any collection of legally enforceable statutes, regulations) that are at least as stringent as otherwise applicable Federal section 112 rules. No State rule or program is federally approved and enforceable unless and until it is approved by the EPA through the full section 112(l) process established in subpart E. After approval, State rules and operating permit conditions (incorporated in a part 70 permit, as applicable,) that result from approved State programs would be federally enforceable and substitute for the otherwise applicable Federal requirements in that State or local jurisdiction.

State and local agencies with approved part 70 operating permit programs have the responsibility under part 70 to begin immediately the implementation and enforcement of all applicable section 112 rules. Authorities granted at the time of part 70 program approval will not by themselves allow for Federal enforceability of a State rule or program that differs in any respect from an existing Federal rule. State rules or programs that differ from the existing Federal rule remain State enforceable until approved under subpart E. Upon the EPA approval of part 70 programs, States may also receive approval under section 112(l) to implement and enforce federal section 112 rules as promulgated for all part 70 sources. Prior to part 70 approval, States seeking delegation of authority to implement and enforce Federal section 112 rules as promulgated for part 70 sources may request approval under subpart E.

To gain EPA approval of a State rule or program under today's final rule, certain statutory approval criteria contained in section 112 must be met. These criteria require that a submission for approval of a State rule or program must demonstrate adequate authority, adequate resources, an expeditious implementation schedule and an adequate enforcement strategy. In addition, for State rules or programs that differ from Federal requirements, one of three sets of specific criteria must be met to assure adequate stringency. If a State is seeking delegation without changes, these stringency criteria are not necessary. The three sets of specific criteria correspond to three options for requesting approval of such rules or programs: Approval of a state rule that adjusts a section 112 rule, approval of State authorities that substitute for a section 112 rule, and approval of a State program which substitutes for some or all section 112 emission standards. Under the first of these three options, a State rule could be approved that is similar to and at least as stringent as, a Federal rule. The State rule must have undergone a 30-day State notice and public comment period before submission for Federal approval under section 112(l). Under this option, any difference from the Federal rule must have been included in the subpart E list of "adjustments". The Agency believes that those adjustments will result in a rule that is clearly no less stringent than the otherwise applicable Federal rule. There can be no ambiguity regarding the stringency of a rule that differs from the Federal rule by any of the proposed adjustments approved under this option. If the EPA finds that the State request meets the necessary criteria, the State rule with adjustments is approved and becomes Federally enforceable in lieu of the otherwise applicable section 112 rule.

Under the second option, the EPA may approve a State rule (and in certain limited cases, a specific application of broader State authorities) with greater differences from the Federal rule. This could be the case when a State submits a rule written with a different conformation than a Federal rule or when, for example, a State rule achieves equivalent emission reductions but with a combination of levels of control and compliance and enforcement measures not provided for in the Federal rule.

Under today's final rule, a State must make a detailed demonstration that the State rule results in equal or greater emission reductions (or other measure of stringency such as specified for section 112(r)) for each individual source affected by the Federal section 112 rule. Further discussion of detailed demonstrations can be found in the enabling guidance entitled, "Enabling Guidance for Approval of State Programs and Delegation of Federal Authorities available as described in section V of this preamble. If the EPA finds that the demonstration is satisfactory, subpart A of part 63 would be amended to incorporate the approved State rule. The approved State rule would be federally enforceable and replace the otherwise applicable Federal

rule in the relevant State or local jurisdiction.

For requirements for prevention of accidental releases, approval of a State rule which substitutes for the Federal section 112(r) rule must be no less stringent, cover the substances listed pursuant to section 112(r) at or below the threshold quantity, contain accident prevention requirements, facility registration, enforcement provisions which contain an auditing component as well as other measures, and provisions for the disclosure of facility information.

The third option is for approval of a generic State program that substitutes for some or all section 112 emission standards. Under this option, a State program may be approved in place of specific standards and requirements established under sections 112(d), (f), or (h) for incorporation in part 70 permits. For other Federal rules which are not emission standards, for example the requirements of section 112(g), this third option is not available. Rather, approval for State programs with requirements corresponding to Federal requirements other than section 112 (d), (f), or (h) may be sought under options one or two.

For approval under this third option, a State must make a legally-binding commitment to undertake certain actions; the commitment will be adopted under State law. First, the State must commit to regulate every source that would have been regulated by the otherwise applicable Federal section 112 emission standards for which approval is requested. Second, the State must provide assurance that the level of control and compliance and enforcement measures in each part 70 permit for these sources are at least as stringent as those that would have resulted from the otherwise applicable Federal emission standards. Finally, the State must commit to expressing the part 70 operating permit terms and conditions in the form of the otherwise applicable Federal standard. This means that the State must commit to express in the resulting part 70 permit, a level of control in terms of an emission limit, level or reduction, derived from its own program, that is in the same units of measure as the Federal rule and must commit to express other elements of the standard in the same form as the Federal standard. Required compliance provisions must also be in the same form and units of measure as the Federally promulgated compliance provisions. Underlying these commitments is the premise that a State must demonstrate the authority and commitment to permit all of these sources and to require terms and conditions that are no less stringent than would be required under the otherwise applicable Federal standard. If the EPA approves the State program, the EPA would then promulgate a rule amending part 63 to incorporate the State program.

A State may use any one or any combination of these three options in its request for approval of State rules or programs. To illustrate, a State submitting a request under option three, program approval, might not be able to gain approval for regulation of all source categories. In particular, approval under option three may not be granted for area sources which a State has chosen to exempt from part 70 permits. This would not, however, preclude a State from seeking approval under option two of a State rule regulating these area sources.

Regarding the EPA oversight of approved State programs, in receiving approval of a State rule or program, a State has the responsibility to respond in a timely fashion to the EPA requests for information needed to review the adequacy of State implementation and enforcement of an approved rule or program. The EPA will develop guidance for the regular review and intermittent audits of approved State rules and programs.

After approval has been granted, if the EPA finds that an approved rule or program is not being adequately implemented or enforced, the EPA has the authority to withdraw approval of that rule or program. Before approval is withdrawn, however, the State has the opportunity to correct the deficiencies identified in the EPA's review or audit. The EPA would inform the State of changes that need to be made and, if the State does not take adequate action to correct the deficiencies, a public hearing would be held and public comment accepted. The State would then have 90 days to correct the situation. After this process has taken place, if the State does not correct the identified deficiencies, the EPA would then withdraw approval of the rule, the program or part of the rule or program. Upon withdrawal of approval of a State rule or program that is found to be less stringent than Federal requirements, States would be required to reopen part 70 operating permits according to the provisions in § 70.7(f) and rewrite permit conditions to reflect requirements of the applicable Federal section 112 rule. The federally promulgated section 112 standard is the applicable and federally enforceable standard unless and until a State rule or program is approved by the EPA pursuant to the procedures set forth in this final rule. Once approved, the State rule or program becomes the applicable standard which the EPA has authority to enforce, and the federally promulgated standard is no longer the applicable or enforceable standard. Upon withdrawal of approval of a State rule or program, the federally promulgated standard for which the State rule or program substitutes once again becomes the applicable standard. In the withdrawal notice, the EPA will establish an expeditious schedule for sources to come into compliance with the federally promulgated standard.

Under §§ 63.96(b)(4)(v) and 63.96(b)(7)(iii), which address withdrawal of approval of State programs either by the EPA or voluntarily by the State, the final rule states that the EPA has authority to enforce the applicable section 112 requirement. This authority is a restatement of section 112(l)(7), which provides that nothing shall prohibit the EPA from enforcing any applicable emissions standard or requirement under section 112. The EPA always has concurrent authority to enforce the applicable section 112 standard, which may be either an approved State standard or a Federal standard, depending upon whether the State standard has been federally approved pursuant to the procedures set forth in this final rule.

Today's rule also provides guidance on the approval of State Accidental Release Prevention (ARP) Programs established under section 112(r). The section 112(r) (3)–(5) "list and threshold" rule was proposed in January 1993 (58 FR 5102). A proposed risk management program rule under section 112(r)(7) was proposed in October 1993.

In order to receive approval and delegation for an ARP program which differs from the Federal section 112(r) rules, a State submission must meet the criteria set out in § 63.91, either § 63.92 or § 63.93, and § 63.95. For approval of State rules or programs to implement and enforce the Federal accidental release prevention program as promulgated without changes, the requirements of this section and § 63.95 must be met.

A State program must demonstrate the authority and resources necessary to implement and enforce regulations which authority covers the regulated substances at or below the thresholds, the accidental release prevention requirements, as well as identify the entity that will be receiving the registration from regulated sources.

In addition, the State submission must include a description of the procedures for registration of sources,

receiving and reviewing risk management plans, making the plans available to the public, and the coordination mechanism the implementing agency will use with the Chemical Safety and Hazard Investigation Board, the State Emergency Response Commission, the Local Emergency Planning Committees, and the air permitting program (if it is not responsible for implementing section 112(r) in the State).

States do have the option of requesting a complete or partial program. Partial delegation in terms of the ARP program here refers to geographic area. This allows delegation of section 112(r) to local agencies, provided that the entire area of the State is subject to the requirements under section 112(r). The Agency believes that the ARP program should not be subdivided into various components based on chemical or industry because this would promote confusion for industry and inhibit the integration of the ARP program into State wide activities. Further, any delegation of the ARP program requires the State program to contain a set of core requirements for all subject sources. This is consistent with the requirements in section 112(l)(5)(A) that requires an approved State program to contain the authorities "to assure compliance by all sources within the State with each applicable standard, regulation, or requirement established by the Administrator under this section." Section 63.95 sets out the core requirements for an approvable State ARP program.

IV. Significant Comments and Changes to the Proposed Rule

This portion of the preamble is organized by each section in subpart E, and discusses the principal regulatory changes made in the final rule in response to public comments. It also discusses some comments that did not result in regulatory changes.

A. Section 63.90—Program Overview

This section provides a brief overview of the subpart. It also establishes subpart definitions, outlines local agency roles and enumerates authorities to be retained by the Administrator.

In response to comments received, and to provide for approval of State programs under additional circumstances, the Agency has amended this section to provide for approval of State rules or programs to implement and enforce Federal section 112 rules without change as promulgated by the EPA. Therefore, this section now provides a mechanism for delegation of Federal standards prior to approval of a State's part 70 operating permit program and for Federal section 112 requirements for sources that are not subject to the requirements of part 70. A State seeking approval for programs to implement and enforce Federal section 112 rules must meet the criteria of section 112(l), as specified in this section, including the requirement for notice and opportunity for public comment. Procedural mechanisms for delegation will be addressed in the Enabling Guidance, available as described in section V of this preamble.

Part 70—Approval and Delegation Without Changes

One commenter noted that approval of a State part 70 program would not include a review of resources needed to cover the cost of bringing enforcement actions under section 502(b) and yet this cost must be included in an adequate demonstration of resources before approval under this subpart. In addition, the commenter argued that the part 70 program approval process will not be adequate to assure section 112(l)(5) criteria are met before delegating under section 112(l).

The Agency disagrees with these comments. The Agency notes that approval that occurs under any of the three part 63 subpart E options for approving changes to the Federal program will examine these costs in a specific resource review during the approval process under subpart E. The EPA maintains that program review under part 70 will satisfy the adequate resource criterion under section 112(l) and that the section 112 program requirements may be delegated to the States without changes.

Part 70 requires a demonstration that a State has authority to adequately administer and enforce the part 70 program. Several provisions of the part 70 regulations ensure this type of demonstration. For example, the State must demonstrate under § 70.4(b)(3)(vii) adequate authority to enforce all permit terms and conditions and the requirements of the permit program consistent with the civil and criminal authority required by § 70.11. States must also submit pursuant to § 70.4(b)(4)(ii) all relevant guidance used in implementing the program, including criteria for monitoring source compliance such as inspection strategies, and pursuant to § 70.4(b)(5), a complete description of the State's compliance tracking and enforcement program.

States must also submit a detailed statement that adequate personnel and funding have been made available to develop, administer and enforce the program under § 70.4(b)(8). Finally, States are required to annually submit detailed information regarding the State's enforcement activities under § 70.4(b)(9). In addition § 70.6 (a) and (c) require all permits to contain sufficient monitoring, recordkeeping, reporting and compliance certification requirements to ensure that the permit terms and conditions may be adequately enforced.

The commenter is correct in that section 502(b)(3)(A)(ii) does not require a State to collect permit fees to cover "any court costs or other costs associated with any enforcement action." However, this does not mean that the State does not have to adequately enforce the terms and conditions of permits, including bringing judicial enforcement action where necessary. Rather, it means that the State is not required under title V to collect fees to cover the actual court costs of such enforcement actions. Under section 112(l)(5), the State demonstration must show that adequate resources to implement the program are available; the EPA believes that the requirements under part 70 will meet this requirement as applicable.

In addition, the commenter noted that citizens have not been provided adequate notice that States may receive delegation of section 112 based on their part 70 operating permit program because some States have already begun preparation for submittal of part 70 programs.

The EPA disagrees with this comment. In order to obtain approval of a part 70 operating permit program, adequate resources and authority must be demonstrated. In addition, the part 70 operating permits rule provides that States write permits including "all applicable requirements". Part 70 defines applicable requirement to include "(a)ny standard or other requirement under section 112 of the Act." Clearly, this constitutes adequate notice of intent that section 112 requirements must be included in part 70 programs, and this was included in the part 70 regulations when promulgated.

In addition, during the part 70 permit issuance process, "* * * any person may petition the Administrator to veto a permit * * *." § 70.8(d). The objections in the petition must have been previously raised during the public comment period on the permit provided by the State issuance process, unless the petitioner shows that it was impracticable at that time. This provides an additional opportunity for comment on incorporation of particular section

112 requirements in an individual permit.

Clarification of State Rights Under Section 116 and Section 112(d)(7)

Some commenters questioned whether the Act provides authority for the EPA to approve more stringent State standards that are not based on the same considerations the EPA must include when it establishes standards under section 112, for example the cost of achieving emission reduction and any non-air quality health and environmental impacts and energy requirements. See section 112(d)(2). In addition, commenters pointed out that EPA may not approve, under § 70.1(c), State programs that are inconsistent with the Act.

The Agency recognizes the complex interactions that are the consequence of regulation of a community of sources by both the State and Federal governments and that accompany any division of responsibility in such a joint effort. From its inception, the Act has been based on a strategy of air pollution prevention and control at its source that recognizes the States and local governments as bearing the primary responsibility for such prevention and control. Clean Air Act section 101(a)(3). By enacting section 116, Congress also recognized that States and local governments, in responding to concerns within their own jurisdictions, might desire to control air emissions more stringently than would be required by the Federal government on a nationwide basis and might therefore require more stringent limitations on emission of air pollutants from sources within their State. Section 116 explicitly allows such State standards and limitations as long as they are no less stringent than the corresponding Federal standard or limitation.

In enacting the 1990 Amendments, which require the EPA to establish standards for emission of hazardous air pollutants, Congress was aware that many States had already developed active and effective air toxics programs. S. Rep. at 149. Much of the development of these State programs had occurred with the support and encouragement of the EPA, and Congress recognized that existing State programs were a significant component of the nationwide air toxics control strategy. In addition, the preamble to the final rule establishing the part 70 operating permit program recognized that minimizing disruption of existing State programs is an important goal of the Agency's implementation of the Act. (57 FR 32350, 32251, 32263, 32265, 32273 (1992).)

In establishing requirements under the 1990 Amendments, Congress included under the provisions of section 112 a mechanism by which States could seek approval of their air toxics programs and established criteria for determining whether or not a State program was approvable. Section 112(l)(5) requires that the Administrator disapprove a State program if, among other things, the Administrator determines that "the authorities contained in the program are not adequate to assure compliance by all sources within the State with each applicable standard, regulation or requirement established by the Administrator under this section." Section 112(l)(1) requires that a program submitted by a State "shall not include authority to set standards less stringent than those promulgated by the Administrator" under the Act. Therefore, State standards and requirements must be at least as stringent as corresponding Federal standards and requirements.

In addition, section 112(d)(7) reinforces the authority of States to issue standards under State authority specifically in the area of air toxics control. No section 112 standard or other requirement is to be interpreted, construed or applied to diminish or replace the requirements of a standard issued under State authority. Since section 116 precludes a State from adopting or enforcing less stringent standards than those under section 112, section 112(d)(7) thus prohibits interpreting, construing, or applying section 112 standards or requirements to diminish or replace State standards if they are no less stringent than section 112 standards.

The part 70 operating permits program regulations also provide for no less stringent State requirements. Section 70.1(c) states that nothing in part 70 shall prevent a State from establishing additional or more stringent requirements not inconsistent with the Act. In addition, § 70.1(c) also states that no permit can be less stringent than necessary to meet all applicable requirements. Section 70.6(b)(2) requires a State to identify any permit terms and conditions that are not required under the Act or under any of its applicable requirements, and thus States may establish more stringent State-only standards for incorporation in that section of the operating permit. The 1990 Amendments section 506 authorizes States to establish additional permitting requirements as long as they are not inconsistent with the Act, and States are free to establish more stringent permit revision procedures provided the minimum requirements of part 70 are met. 57 FR 32250, 32284 (1992).

Thus, States may establish State requirements, as long as they are no less stringent than corresponding Federal requirements, and may incorporate those requirements into part 70 operating permits according to the requirements of part 70. In addition, section 112(l) places no restrictions on the stringency of approvable State standards, other than that they may not be less stringent than corresponding Federal standards, nor does section 112(l) require consideration of any particular factors in development of an approvable State standard.

Federal Enforceability

Several commenters questioned the basis for the EPA's determination that a State rule or program, once approved according to the requirements of section 112(l), resulted in approved State standards and emission limitations that were federally enforceable. Other commenters requested explanation as to the EPA's delegation authority under section 112. One commenter stated that the EPA's delegation of authority would be unconstitutional under the Appointments Clause of the United States Constitution.

Prior to the enactment of the 1990 Amendments, the Administrator was authorized to delegate her authority to implement and enforce standards promulgated under section 112. When this delegation occurred, a **Federal Register** notice was published and the delegation authority cited in the Code of Federal Regulations. Delegation procedures were spelled out in an EPA publication, "Good Practices Manual for Delegation of NSPS and NESHAPs". Duplicate delegation authority for new source performance standards resided in section 111 and was unchanged by the 1990 Amendments section 111(c). In the 1990 Amendments, Congress chose a new mechanism for delegation of EPA's authority under section 112, by adding provisions for approval of State programs to the delegation of authorities and responsibilities that had been present in the pre-1990 section 112. See S. Rep. at 196. The provisions for approval under section 112(l) indicate Congress's view of a dramatically expanded role for the States in regulation of air toxics. For example, Congress recognized that section 112(l) authorities will greatly expand the role of State agencies and stated that "the legislation significantly expands the statutory role for State and local air pollution control agencies in the regulation of air toxics." S. Rep. at 149,

192. In addition, Congress expressly recognized the effectiveness of existing State programs in control of air toxics, *e.g.*, 136 Cong. Rec. S16978 (daily ed. Oct. 27, 1990) (Clean Air Conference Report, Air Toxics); 136 Cong. Rec. S519–20 (daily ed. Jan. 30, 1990) (statement of Sen. Durenberger).

As enacted under the 1990 Amendments, section 112(l) authorizes the Administrator to approve State programs for control of hazardous air pollutants and for prevention and mitigation of accidental releases if the State program meets certain criteria, which are specified in section 112(l)(5).

These criteria require the State program to contain adequate authorities to assure compliance by all sources within the State with each applicable standard, regulation or requirement established by the Administrator under section 112; adequate authority and resources to implement and enforce the program; and an expeditious schedule for implementing the program and assuring compliance by affected sources. Section 112(l)(5)(A)–(C). The program must be in compliance with the guidance issued under section 112(l)(2) and can not be unlikely to satisfy, in whole or in part, the objectives of the Act. Section 112(l)(5)(D). In addition, the program may not include authority to set standards less stringent than Federal standards promulgated under the Act. Section 112(l)(1). Activities under section 112(l) are subject to the provisions of savings clauses for enforcement of section 112 standards and requirements, section 112(l)(7), and authorities and obligations of the Administrator and the State under title V, section 112(l)(9). However, section 112(l) does not directly address the issue of Federal enforceability of State air toxics standards.

Provisions regarding Federal enforcement of section 112 requirements are specified in section 113. In particular, section 113(a)(3) provides for enforcement of any "requirement or prohibition of (title I, including section 112), including, but not limited to, a requirement or prohibition of any rule, plan, order, waiver, or permit promulgated, issued, or approved under (title I, including section 112)." This language was added by the 1990 Amendments, which generally broadened enforcement authorities under section 113. S. Rep. at 358–66.

Under the pre-1990 Amendments, more stringent State standards were not Federally enforceable, since the statute provided for enforcement only of violations of section 112(c), which clearly applied only to standards promulgated by the EPA. The statute as amended in 1990 does not by its own terms prohibit the violation of State hazardous air pollutant emission standards, and thus, such standards are Federally enforceable only if they constitute a "rule, order, waiver or permit promulgated, issued, or approved" under the Act, that is if such State hazardous air pollutant emission standards included within or adopted into an approved program are "promulgated, issued, or approved" under the Act.

There is no doubt that State standards are "emissions standards" that the State must implement and enforce under section 112(l)(1). Section 302(k) defines "emission standard" to mean "a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis * * *." Moreover, Congress expressly acknowledged State authority to set emission standards under section 112(l) programs. Section 112(l) prohibits States from submitting programs that include "authority to set standards less stringent than those promulgated by the Administrator" under the Act. This formulation implies that States have authority to set more stringent standards. If they lacked such authority, the prohibition would be unnecessary. While section 112(l)(1) permits States to submit programs for the "implementation and enforcement" of emission standards and other requirements, it does not provide guidance as to the scope of applicability of these State programs. Section 112(l) does not specify what is meant by "partial or complete delegation" of the EPA's authorities and responsibilities and does not provide guidance as to the relationship between existing State standards, previously encouraged and supported by the EPA, and newly-promulgated Federal standards. In particular, it does not provide explicitly for the approval of State emission standards. Because the statute is ambiguous regarding the question of Federal enforceability of approved State standards, the EPA must consider Congress's objectives and policy goals in enacting section 112(l), as well as the overall purposes of the Act. Through this rulemaking the EPA is therefore interpreting the provisions of section 112(l) to authorize approval of State programs and rules that are federally enforceable under section 113. Under the two-step analysis of *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council*, 467 U.S. 837 (1984), if Congress has not "directly spoken to the precise question at issue," and if the statute is silent or ambiguous on the issue, then a regulation must be based on a "permissible construction of the statute." *Id.* at 843. When "competing Congressional goals" are encompassed within the statutory scheme, the EPA may reconcile these with "a reasonable accommodation of (the) differing policy objectives." *Natural Resources Defense Council* v. *EPA*, 822 F.2d 104, 117 (D.C. Cir. 1987). The EPA's interpretation must be "reasonable and consistent with the statute's purpose." *Chemical Mfrs. Ass'n* v. *EPA*, 919 F.2d 158, 162–63 (D.C. Cir. 1990). Section 101(a) of the Act recognizes that air pollution prevention and air pollution control at its source is the primary responsibility of States and local governments. In the area of air toxics regulated under section 112, Congress clearly supported States' past efforts to regulate air toxics sources, recognized that some State programs had been developed earlier than the Federal program, and provided a new Federal regulatory scheme under section 112 that included a mechanism for States to maintain existing requirements as long as they were no less stringent than Federal requirements and the State met program approval criteria.

In response to comments, the EPA has added § 63.90(d), Federally enforceable requirements, to clarify that approved rules and requirements are enforceable by the Administrator and citizens under the Act.

However, in exercising EPA's enforcement authority, the Agency would direct its resources towards the provisions of the approved State rule, program, and resulting permit conditions implementing the rule, which the Agency relied on in determining that the State rule or program assured compliance with the Federal requirements. In deciding whether to bring an enforcement action, the Agency would take into account the extent to which any violations implicate the control levels or compliance measures required by the otherwise applicable Federal rule, where the source's compliance with the otherwise applicable Federal standard can be determined. For example, if the Federal standard required a control efficiency of 95 percent and the State rule approved pursuant to section 112(l) required a control efficiency of 99 percent, EPA, in deciding whether to bring an enforcement action, would consider whether the source met the 95 percent control level. If EPA determines that the source was operating equipment that achieved a control level of 96 percent, EPA would not intend to take action

against the source for violation of that element of the State rule.

The EPA does not intend to bring an enforcement action against any source covered by a State rule that would not have been covered by the Federal rule. In cases where an alleged violation does not implicate a control requirement of the otherwise applicable Federal rule, EPA will defer to the State to exercise its own enforcement authorities to enforce the more stringent provisions of the approved State rule.

Regarding the constitutionality of delegation under section 112, the EPA notes that delegation of authority is a well-established practice that has long provided a mechanism for States and local governments to carry out certain provisions of Federal mandates, as authorized by Congress, according to specific criteria and standards, and as overseen by the delegating Federal agency. For example, under the Act, Congress has expressly granted the EPA authority to delegate to a State in section 111(c)(1) (new source performance standards), section 112(l)(1) (hazardous air pollutant and accidental release prevention requirements), and section 328(a)(3) (outer continental shelf activities). Delegation of authority from Federal agencies to State or local governments, including delegation of authority under the Act, has been upheld by the courts. *Southern Pacific Transp. Co.* v. *Watt*, 700 F.2d 550 (9th Cir. 1983) *cert. denied* 464 U.S. 1064 (1984); *Nance* v. *Environmental Protection Agency*, 645 F.2d 701, 714–15 (9th Cir. 1981) *cert. denied sub nom Crow Tribe of Indians* v. *Environmental Protection Agency*, 454 U.S. 1081 (1981); *United States* v. *Matherson*, 367 F.Supp. 779, 782 (E.D.N.Y. 1973) *aff'd without op.* 493 F.2d 1399 (2d Cir. 1974).

Stringency

Several commenters requested clarification of the measure of stringency that the EPA would use to determine whether a State program or rule was approvable. Commenters asked whether stringency would be measured by emissions reductions and whether the comparison would be made at the emission point, source, or facility level.

As explained below, stringency may be measured by level of control as expressed by emissions reductions, applicability as to the sources subject to requirements, compliance and enforcement measures, such as averaging times, or other measures as determined by the Administrator. Simply put, comparison is made at the point at which the Federal requirement is determined, so that if the Federal requirement is a requirement at the source, so too must the approvable State requirement be at the source; and if the Federal requirement is placed on an emission point, the State requirement must do the same.

In the general description of State Programs under section 112, section 112(l)(1) describes programs that States may develop and submit for approval by the EPA. Section 112(l)(1) prohibits State programs that include "authority to set standards less stringent than those promulgated by the Administrator" under the Act. This prohibition against standards less stringent than Federal standards implies a comparison between the State requirements and the corresponding Federal requirements. Under section 112(l)(5), the EPA must disapprove a State program if the program's authorities are not adequate to assure compliance by all sources within the State with each applicable standard, regulation or requirement established by the Administrator under section 112.

Taken together, these requirements provide that State programs maintain, as a minimum, all Federal standards, regulations, and requirements as established by the Administrator and ensure that any corresponding State requirements are at least as stringent. Thus, an approvable State standard could not allow, for example, less emissions reductions than the corresponding Federal standard, and the emission reductions would be measured according to the requirements of the Federal standard, that is, if the Federal standard measured emissions reductions at each emission point, a State standard would have to do likewise to be approvable.

Several commenters also felt that the basis for stringency should not be restricted to emission reductions but should instead focus on the impacts that result from emissions. Also, a commenter noted that the basis for stringency should be in accordance with the criteria for establishment of regulatory requirements, e.g. cost, non-air quality health, environmental, and energy impacts of section 112(d) standards.

The EPA recognizes that several provisions under section 112 examine specific impacts to human health and the environment and call for future regulation based on such impacts. The central basis for section 112, however, is the maximum achievable control technology (MACT) program that mandates the installation of controls and the reduction of emissions of listed HAP's regardless of proof of specific resulting impacts. While a reduction of the impacts of HAP emissions to human health and the environment are the central objectives of section 112 of the 1990 Amendments, Congress based the establishment of MACT stringency on "reduction of emissions" and "emission limitation." (See sections 112(d)(2) and 112(d)(3).) This then should also be the primary basis for determining the stringency of State rules and programs to be approved in lieu of Federal section 112 rules. Further, the EPA believes that reliance on a comparison of impacts would be extremely difficult and resource-intensive and such analysis might often require approval decisions in the face of large degrees of uncertainty. Section 63.90 defines "stringency" to be measured by the quantity of emissions or by parameters relating to rule applicability, level of control, and compliance and enforcement measures, or as otherwise determined by the Administrator. Thus determinations that State rules are no less stringent than corresponding Federal rules will typically compare the parameters in the State and Federal rules using the definitional measures or as mandated by a particular Federal standard.

The EPA wishes to clarify that, where Federal emission limitations are expressed as an aggregate total, or as a total of an aggregate grouping (for example total volatile organic compounds), the stringency comparison is made based upon the aggregation that is identified in the Federal rule. For example, for an emission limitation in a Federal rule expressed as a given pounds per hour of total HAPs, the stringency comparison in a section 112(l) submittal would be made on a total HAP basis. To clarify this point, the definition of "level of control" has been changed in the final rule to explicitly address such situations where the Federal rule provides for emission limitations on an aggregate basis. The change to this definition also reflects a requirement to ensure that, when such aggregate comparisons are made, there would not be an increase in public health risk.

One commenter also indicated that the EPA had not articulated the basis for determining the equivalency of State ARP programs. Since the ARP program is not necessarily based on emissions, determining equivalency based on potential emission reduction can not be done. These requirements are structured as a performance based standard and provide considerable flexibility to the regulated community in terms of compliance. Consequently, State programs may contain different requirements for accidental release

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prevention which are at least as stringent as the Federal requirement and that may be approvable under the criteria in this rulemaking.

Challenging Mechanism

Several commenters sought clarification of judicial review provisions for approval of State rules and programs. Another commenter asked whether approved State rules and programs would be subject to challenge in State or Federal court.

The EPA will look to the provisions of section 307 of the Act regarding judicial review of this rulemaking and of rulemakings for approval of State rules or programs under subpart E. Challenge to State rules when enacted by the State would be under the requirements of State law. However, approval of State rules or programs under subpart E will be a Federal rulemaking and thereby will be subject to the provisions of section 307.

Public Notice and Comment

One commenter stated that approvals, particularly approvals under § 63.92, should be subject to section 307 notice and comment rulemaking.

Section 307 provides for administrative proceedings and judicial review under the Act. Section 307(d)(1) lists actions to which section 307(d) rulemaking procedures apply, and publication of guidance under section 112(l)(2) is not among them. Although the Administrator may determine under section 307(d)(1)(U) that otherwise unlisted actions are subject to section 307, the Administrator has not done so here. Therefore, the rulemaking provisions of the Administrative Procedures Act rather than those of section 307(d) are the relevant provisions for this section 112(l) rulemaking. The commenter noted that approvals under section 112(l) effectively constitute promulgation or revision of section 112 standards and are therefore subject to notice and comment requirements. Although the commenter is correct that section 307 requires notice and opportunity for comment for revisions of certain section 112 standards, the EPA believes that Congress's specific provision for notice and comment under section 112(l)(5) rather than the provisions of section 307(d) guides the procedures required under section 112(l). The EPA notes that approvals under section 112(l) are not national in scope like those listed in section 307(d) but are instead limited to a State or local area. Moreover, a State's request for approval may include State standards corresponding to section 112(r), section 112(h), or other section 112 standards that are not listed in section 307 at all, and Congress nowhere indicated that different procedures should be followed depending on the particular section 112 standard for which the State was seeking approval.

Section 112(l)(5) contains procedural requirements that include a requirement for notice and comment. The EPA has revised § 63.91 to clarify that requests for approval, including requests for delegation of unchanged Federal standards, are subject to the notice and comment requirements of section 112(l)(5). Once a State's initial request has been approved, the notice and comment provisions of §§ 63.91, 63.92, 63.93, or 63.94 apply. In the case of requests under § 63.92, i.e. requests for adjustments that are unequivocally no less stringent than the otherwise applicable Federal standard, today's rulemaking along, with the notice and opportunity for comment at the time of the State's initial request fulfills the notice and comment requirement under section 112(l)(5). Because the EPA has determined in this rulemaking, which has provided notice and opportunity for comment, that each of the listed adjustments is unequivocally no less stringent, and because at the time of the State's initial request, the EPA will evaluate the State's program to ensure that it meets the requirements of section 112(l)(5), the requirement for notice and opportunity for comment will be fulfilled both for determination of stringency and for determination of adequacy of the State's program.

Delegation

One commenter noted that the term "delegation" should be more clearly defined to explain how it relates to Federal enforceability.

Delegation under section 112(l) means the transfer of authority from the Administrator to a State, according to certain criteria and standards, to implement and enforce the rules or programs approved according to the requirements of section 112(l). Once approved under the provision of section 112(l), a State rule or program is federally enforceable, which means that the Administrator can enforce the approved State rule or program in Federal court. The State may also enforce approved State standards in State court under State law. In addition, with the exception of requirements designated in the permit as State-enforceable only, and terms and conditions of an approved State rule or program, must be incorporated in the Federally enforceable section of a part 70 permit, and are enforceable according to the provisions of part 70. State law may determine the actual mechanism by which delegation occurs and by which requirements are incorporated in part 70 permits. Also, delegation of authority may occur according to requirements under State law for sources not subject to the requirements of part 70.

Adding Pollutants

In response to EPA's solicitation of comment regarding delegation of authority to add to the list of pollutants under section 112(b), many commenters expressed a view that this was not authorized under section 112(l). Similar comments were received regarding delegation of authority to regulate substances beyond those listed under section 112(r) and to modify the list of source categories under section 112(c). Other commenters feared adverse effects on State programs that contain pollutants other than those specified in section 112(b) if the EPA did not delegate authority under section 112(l) for regulation of additional pollutants.

The EPA notes the many comments regarding delegation of authority to regulate additional pollutants and substances under section 112 (b), (c), and (r). Some commenters noted that these sections contain procedures under which the Administrator may revise the list of pollutants, substances, or source categories and that these procedures are the appropriate mechanism for changes to the lists. The EPA has carefully considered the comments received on this issue and has chosen not to revise the proposal as to delegation of these authorities. Therefore, the EPA retains its authority and will not delegate the authority to add or delete pollutants from the list of hazardous air pollutants established under section 112(b), the authority to add or delete substances from the list of substances established under section 112(r), or the authority to delete source categories from the Federal source category list established under section 112(c)(1) or to subcategorize categories on the Federal source category list after proposal of a relevant emission standard, as was specified in the proposal in § 63.90(c).

The Agency notes that Congress recognized that many State programs prior to enactment of the 1990 Amendments addressed many more pollutants than those finally listed under section 112(b). In fact, Congress explicitly provided for support of State programs for additional pollutants in requiring the EPA to include the high-risk point source program as an element in the guidance to be published under section 112(l)(2). The EPA is publishing

this guidance for high-risk point source programs, available as described in section V of this preamble. Congress also provided for technical assistance and grants, which may include support for high-risk point source review. Section 112(l)(4). These mechanisms provide additional support for broader State programs that address pollutants other than those listed under section 112(b), without requiring approval of State standards for additional pollutants.

B. Section 63.91—Criteria Common to All Approval Options

This section describes the basic process for approval under this subpart, criteria which must be met for all three approval options and discussion of the process employed when previously approved State authorities are later revised.

The EPA has revised this section to incorporate procedures for approval of State programs that contain section 112 rules exactly as promulgated by the EPA. States are likely to seek these approvals prior to receiving approval of their part 70 operating permit programs or for sources not subject to part 70, such as deferred or exempt sources.

In addition, in response to comments received, the EPA has revised this section to delete the reference to a determination by the EPA of whether a State rule or program is likely to satisfy the objectives of the Act in whole or in part. This reference has been deleted because it is not a criterion for approvability to be included in this subpart. Section 112(l)(5) provides that the Administrator must disapprove a State program if the Administrator determines that the program is not in compliance with the guidance issued under section 112(l)(2), that is subpart E, or the program is not likely to satisfy, in whole or in part, the objectives of the Act. Therefore, since the determination as to satisfying the objectives of the Act is separate and distinct from the requirement to comply with subpart E, the EPA has deleted the reference from this section.

The EPA's evaluation of a State's request for approval will necessarily ensure that an approved program is not inconsistent with the objectives of the Act. Consideration of consistency with objectives of the Act is a qualitative judgement implicitly incorporated in the EPA's overall determinations, not only for approval of State programs under section 112(l) but in other determinations that the EPA must make as well, rather than a separate criterion for approval under the guidelines of section 112(l)(5) (A), (B), and (C) and the regulations as promulgated here. The EPA would not and will not approve a State program that is not likely to satisfy, in whole or in part, the objectives of the Act.

Timing for Approvals

Several commenters felt that the 180 days that the EPA is allowed by the statute to approve or disapprove a State rule or program is unnecessarily long.

Submissions for approval under §§ 63.93 and 63.94 require evaluation of the State's submittal and a determination as to the stringency of the State rule or program, as well as notice and opportunity for public comment and a careful consideration by the EPA of those comments prior to approving or disapproving a State submittal. The EPA, therefore, finds 180 days to be an appropriate period to consider State requests made under these sections. As explained in the previous section on public notice and comment, under § 63.92, additional public comment beyond public comments at the State level for each rule submitted under § 63.92 and public comment on this subpart E rulemaking will not be taken. For this reason, the EPA is committing to grant requests for approval under this section within 90 days. Shortening this period for approval will result in less uncertainty for sources and States affected by a request for approval under this section. The rule has been revised accordingly to reflect this shorter review period.

Part 70—Approval as a Precondition for Section 112(l) Approval

Several commenters noted that approval of a State's part 70 program should not be a precondition for approval of a State's request under section 112(l).

Under § 70.4, States must submit to the Administrator a proposed part 70 operating permit program. Elements of the initial program submission are specified in § 70.4(b) and include a complete program description; regulations that comprise the permitting program; a legal opinion from the State Attorney General that the laws of the State provide adequate authority to carry out all aspects of the program including all applicable 112 requirements; a complete description of the State's compliance tracking and enforcement program; a demonstration that permit fees required by the State program are sufficient to cover per program costs; a statement that adequate personnel and funding have been made available to develop, administer, and enforce the program; a commitment from the State to submit information regarding the State's enforcement activities; provisions for adequate, streamlined, and reasonable procedures for expeditious review of permit revisions or modifications; and other information.

Under section 112(l)(5), the Administrator must disapprove a State's program if she determines that the authorities contained in the program are not adequate to assure compliance with each applicable standard, regulation, or requirement established by the EPA under section 112; adequate authority does not exist or adequate resources are not available to implement the program; the implementation and compliance schedule is not sufficiently expeditious; or the program is not in compliance with the guidance issued under section 112(l)(2) or is not likely, in whole or in part, to satisfy the objectives of the Act.

As outlined above, the information which must be submitted by a State under part 70 encompasses the information required under section 112(l)(5) for approval of State programs that seek only to implement and enforce Federal standards exactly as promulgated. Moreover, the EPA's exercise of its oversight functions under part 70 will help ensure that a State with an approved part 70 program will continue to meet the criteria in section 112(l)(5) for sources subject to the requirements of the part 70 program. Therefore, duplicate applications for such programs would be unnecessary and redundant for any sources a State will permit under part 70. States will need to receive delegation of authorities to implement and enforce section 112 rules and this delegation may take place according to the provisions of the EPA guidance entitled, "Enabling Guidance for Approval of State Programs and Delegation of Federal Authorities".

Part 70 approval also confers approval under section 112(l) for delegation of unchanged Federal standards because part 70 approval suffices to satisfy section 112(l) approval requirements for unchanged section 112 standards. Requirements for part 70 approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) approval requirements for delegation of section 112 standards as promulgated by the EPA. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, for part 70 sources, part 70 approval also constitutes approval under section 112(l)(5) of the State's programs for delegation of section 112 standards that

are unchanged from Federal standards as promulgated.

An approval action under the provisions of part 63 may in fact include the actual delegation of existing standards. It will not, however, include delegation of future standards. Rather, it will make provisions—for example, as structured in an accompanying MOU—for the delegation of future standards. Such an MOU may allow for automatic delegation, or case-by-case delegation, or automatic delegation except for certain standards, such as the radionuclides standard, or other delegations as appropriate. The provisions of individual approvals and MOUs will differ depending on the authority the State has under State law to accept delegation.

In addition, States may seek approval of State programs prior to receiving approval of their operating permit programs under part 70. In this instance, States must fulfill the requirements of § 63.91, including requirements for notice and comment, even for programs containing only Federal standards exactly as promulgated by the EPA or containing only adjusted rules under § 63.92. The EPA has revised the provisions of § 63.91 to reflect this requirement.

Delegation of section 112 standards is subject to the requirements of section 112(l). Procedurally, implementation of section 112(l) requires submittal of a request for approval, notice in the **Federal Register** that the EPA has received a request, a public comment period of at least 30 days, and notice in the **Federal Register** that the EPA has approved or disapproved the request.

Newly promulgated standards under section 112 must be delegated under the provisions of section 112(l). Delegations of section 112 standards that occurred prior to the 1990 Amendments may remain in effect. Although the EPA could require rescission of these delegations under section 112(l)(1), which provides for review of enforcement delegations previously granted, it is permissible to conclude from that section's provisions and from the savings provisions in section 112(q) that delegations occuring prior to November 15, 1990 remain valid. Nevertheless, the EPA may choose to conduct a review of previously granted delegations under section 112(l)(1), and if the EPA finds, as a result of this review, that the basis for the Agency's determination under pre-1990 section 112(d) of adequacy regarding the State's program is no longer valid, the Agency may require the State to submit a request under section 112(l) to renew its delegation authority.

States may submit requests for section 112(l) programs that would provide for approval of existing standards without the need to repeat section 112(l)(5) notice and comment, as long as the State's law allows such delegation and there is a mechanism to assure that the State continues to meet the approval criteria of section 112(l). A State might be authorized under State law to accept delegation automatically, and as long as the State committed to an adequate funding mechanism, delegation of future standards would be approvable as long as any other section 112(l) requirements were met. If the State for some reason was unable to meet its commitment to provide adequate resources in the future, the auditing and withdrawal mechanism would allow the EPA to withdraw approval, thus providing protection against a State's failure to continue to meet the criteria.

Another procedural streamlining mechanism is the use of direct final rulemaking where appropriate for delegations where there has been no prospective approval like that discussed above. In the instances where the EPA did not expect any comment upon publication of a notice of approval, the notice could specify that the approval would become effective in 30 days unless comments were received. If comments were received, then the EPA would have to renotice the approval and provide for a 30-day public comment period. The time and resource savings from this use of direct final rulemaking would thus depend on the correctness of the Agency's judgement regarding whether or not comments would be submitted.

For States seeking approval of programs under section 112(l) that will include requirements different from Federal requirements, additional information must be submitted. The requirements for these programs are specified under subpart E and in individual section 112 rules. In some cases, States will obtain approval of part 70 programs before they submit requests under part 63. When this is not the case, under certain circumstances, such as prior to approval of a State's part 70 program, or for a request for approval of standards or requirements for sources not subject to the requirements of part 70, the EPA will review State submissions under § 63.91, § 63.92 or § 63.93 according to the criteria in part 63 and will not require approval of the State's part 70 program as a precondition to approval under part 63. Nevertheless, § 63.94 continues to require part 70 program approval prior to section 112(l) approval (see § 63.94 comments). The EPA reserves the right to establish requirements for delegation under section 112(l) according to the criteria of section 112(l) and under other circumstances which may arise in the future. Because part 70 program approval may not necessarily precede approval under subpart E, the following changes have been made concerning the general criteria for approval:

Section 63.91(b)(5) is amended to state the plan should include "at a minimum a complete description of the State's compliance tracking and enforcement program, including but not limited to inspection strategies."

Section 63.91(b)(3) is expanded to require the demonstration to include: (i) A description in narrative form of the scope, structure, coverage and processes of the State program; (ii) a description of the organization and structure of the agency or agencies that will have responsibility for administering the program; (iii) a description of the agency staff who will carry out the State program, including the number, occupation, and general duties of the employees. The State need not submit complete job descriptions for every employee carrying out the State program.

Section 63.91(b)(6) is revised to read: "A demonstration of adequate legal authority to assure compliance with the rule or program upon approval. At a minimum, the State must have the following legal authorities concerning enforcement: (i) The State shall have enforcement authorities that meet the requirements of § 70.11; (ii) If a State delegates authorities to a local agency, the State must retain enforcement authority unless the local agency has authorities that meet the requirements of § 70.11.

The language of § 63.93(b)(4) "whenever they are a part of the rule for which the approved rule would substitute" is deleted.

Section 63.93(b)(4)(iv) is revised to read "The results of all required monitoring or testing must be reported at least every 6 months." Approval of a State part 70 program will substantially meet these requirements.

Objectives of the Act

Nearly every commenter discussed the application of the statutory provision under section 112(l)(5)(D), "not likely to satisfy, in whole or in part, the objectives of the Act." A wide diversity of viewpoints was expressed. Some commenters felt that this requirement gave the EPA the ability to disapprove State rules or programs that, although more stringent than the relevant Federal rule, ran counter to a policy direction the EPA has pursued.

Other commenters pointed out that the EPA policies are not themselves objectives of the Act.

The EPA agrees that in application of this provision, the EPA policies do not necessarily represent the only possible way of meeting the objectives of the Act. The EPA policies generally represent the EPA decisions about the means it will use to achieve the Act's objectives. The 1990 Amendments support the adoption of alternative State and local standards that are at least as stringent as Federal standards and section 112(l) itself is structured to provide flexibility and to accommodate differing State and local approaches.

It would be counter to the goals of section 112(l) and the 1990 Amendments, therefore, for the EPA to disapprove a State or local rule or program simply because it perceives its policies to be different than those of the State standard. As previously explained, the EPA has deleted reference to "objectives of the Act" from § 63.91 because this provision is separate from the approval criteria under subpart E.

Opportunity for Public Comment and Review of Permit Modifications

One commenter expressed concern about public opportunity to review and comment on permits which must be updated as a result of an approval under this subpart.

The EPA agrees that public involvement in the review of such permits is appropriate and beneficial to help assure proper implementation. To clarify this position, § 63.91(a)(6) states that newly approved requirements be included in a permit via the process described under § 70.7(f) of this chapter.

Additional Language on Reopening of Permits

Another commenter pointed out that the requirement that language be inserted in each permit describing permit reopening upon possible withdrawal of approval was unnecessary.

The EPA maintains the need to have a State reopen every permit per the process described in § 70.7(f) upon withdrawal. The EPA feels that such instances are cause for reopening because after withdrawal of the approved State standard, permits containing only the State standard no longer contain applicable requirements.

Compliance Uncertainty

Numerous commenters expressed concerns about the uncertainty sources face in the time period between a State submission for approval and the EPA's decision to approve or disapprove.

Until the EPA approves or disapproves a State submission, sources will remain uncertain about what standards will ultimately apply to them. Several factors may decrease this uncertainty. First, in many cases sources will already be in compliance or soon need to be in compliance with State requirements that are being submitted for approval. It will generally be far more beneficial to such sources to have approval granted, thereby obviating the need for such sources to take further action to comply with the otherwise applicable Federal requirements. Second, any State requirements submitted for approval will have undergone a public comment process at the State level. A third reason tempering concern can be added. While it is true that for any approval under this subpart, a source must always be in compliance with either the underlying Federal rule or the approved State rule or program requirements applicable to that source, this does not mean that sources need be immediately subject to a State rule or program upon approval. It is possible for States to grant additional time to sources to come into compliance with the approved State rule. In their submission to the EPA for approval, a State could set an absolute date for approval or establish a certain period to achieve compliance once a State rule or program is approved. If a State chooses to provide such flexibility, sources must be in compliance with the underlying Federal rule according to any specified compliance timeframes in the interim period.

C. Section 63.92—Approval of a State Rule That Adjusts a Section 112 Rule

This section describes the process and criteria for gaining approval under the first of three approval options. "Rule Adjustment" is the streamlined approval option based on a promulgated list of allowable adjustments to Federal rules that the EPA has determined to result in rules that are categorically no less stringent than the corresponding unchanged Federal rule.

Under each of the three approval options, the EPA will publish the approved rule or program in the **Federal Register** and incorporate the approved rule or program, directly or by reference, under the appropriate subpart of part 63. Several commenters suggested that incorporation of the approved rule or program under the subpart containing the otherwise applicable Federal rule would simplify sources' understanding of applicable requirements. The EPA agrees and will incorporate rules upon approval into these subparts to the extent appropriate. As approvals under § 63.94 can cover numerous section 112 standards, approvals made under that section as well as approvals of ARP programs may be treated differently. For example, ARP programs may be incorporated under the part containing other accidental release regulations.

Stringency Comparison

A few commenters discussed whether comparisons of stringency are best made at the source level or the level of individual emission points.

Among the criteria for approval under this section, a State rule must be unequivocally no less stringent than the otherwise applicable Federal rule with respect to level of control for each source and emission point. The test for stringency of a State submission under the adjustment approval option is a check to assure that proposed State changes qualify as adjustments under § 63.92 and do not deviate from the Federally promulgated list of allowable adjustments in this section. Once that determination is made, no further judgment is necessary. Therefore, no additional Federal public notice and comment are necessary prior to approval of the adjusted State rule because this rulemaking to establish guidance for approval of State programs under section 112(l) constitutes adequate notice and opportunity for public comment for this approval option. For these reasons there can be no question about stringency of a rule submitted for approval under this section. Therefore, to the extent that there are specific Federal requirements for individual emission points, a State rule must match or exceed stringency at each regulated emission point. If a State seeks to submit a rule that creates opportunities for shifting emissions between emission points within the same source or some other type of averaging scheme, that rule must be submitted under § 63.93 in order that the EPA may evaluate the stringency of the State rule compared to the corresponding Federal rule in detail.

Public Notice and Comment

Several commenters felt that approvals granted under this section should be subject to additional opportunity for Federal public notice and comment. Another commenter stated that for approval under § 63.92, a public comment period at the Federal level is unnecessary if the State or local program is already subject to public participation requirements as stringent as the Federal process.

This section was specifically developed to provide sources and States an opportunity to use a streamlined

approval process. The adjustment list was carefully chosen to include only adjustments that are unequivocally no less stringent and has been subject to public comment during this rulemaking under section 112(l). The Agency has considered the public comments regarding the stringency of the adjustments and generally disagrees with those commenters that thought the adjustments could under certain circumstances result in less stringent requirements. If however, a State request for approval under § 63.92 includes an adjustment that as applied in a particular circumstance would not be unequivocally no less stringent, the EPA will disapprove the State's request. The State would be free to resubmit its request under another approval option, such as § 63.93. Therefore, the EPA believes that additional notice and comment for requests under § 63.92 would be unnecessary and redundant and that this rulemaking constitutes adequate notice and opportunity for public comment. First of all, each State rule for which a state seeks approval must have undergone rulemaking at the State level that included public participation equivalent to that required at the Federal level. The regulated community and interested public would have had ample opportunity for comment at that time. Furthermore, this rulemaking for part 63 has provided additional opportunity for comment on the list of adjustments and its application to State rules. Prior to the 1990 Amendments, delegation to implement and enforce unchanged section 112 standards was granted under section 112(d), which did not require opportunity for public notice and comment if the State met "adequate procedures". Those "adequate procedures" specifically called for a demonstration of adequate legal authority, adequate resources, and expeditious compliance. Once a State successfully completed this demonstration, the authority to implement and enforce the unchanged rules was granted.

Under the 1990 Amendments, it is possible for a State to obtain delegation to implement and enforce State rules or programs that may differ from the Federal requirements by submitting them for approval under subpart E. The EPA believes that certain types of changes will clearly result in State rules that are unequivocally no less stringent than the relevant Federal rule. Only a limited set of changes, referred to under this section as adjustments, fall under this definition. These adjustments were included in the proposed subpart E and public comment was sought. A State rule that included only changes from the list of adjustments, therefore, can be approved without additional public notice and comment since the public has had the opportunity through the proposal of this rule to comment on each of the submitted changes. As discussed above, by streamlining the procedures, the EPA has been able to reduce the normal period of the EPA approval time under this section from 180 days to 90 days and has made this change in § 63.92 in response to comments received. Finally, the EPA anticipates that approvals under § 63.92 will be numerous, routine, and noncontroversial. The Administrator may not approve, under § 63.92, any State program or rule in which "any one of the State adjustments to the Federal rule is in any way ambiguous with respect to the stringency of applicability, the stringency of the level of control, or the stringency of the compliance and enforcement measures for any affected source or emission point." Section 63.92(a)(2). If a State submittal under § 63.92 is in any way ambiguous, the EPA will disapprove the request. The State may then resubmit the request under § 63.93 and the EPA will seek public comment for no less than 30 days. Section 63.93(a). The EPA believes that the regulated community and the interested public will have had sufficient notice and opportunity to comment on the unambiguous, unequivocally no less stringent adjustments listed in § 63.92(b)(3) at the State level and through this rulemaking, and that additional safeguards are provided by the provision that requires a State to seek approval under § 63.93 for nonroutine changes to the Federal requirement.

"Any Other Adjustments"

Some commenters felt that the EPA should include among the list of adjustments one which read, "any other adjustments which are unequivocally no less stringent and which have been approved by the Administrator upon petition by the State."

The EPA believes that additions to the list of adjustments must afford an opportunity for Federal public notice and comment. This would generally amount to an amendment of this regulation and, therefore, such a category should not be included in the listed adjustments under § 63.92. Note, however, that the EPA may propose new adjustments specific to a particular section 112 rule at the time that the Federal section 112 rule is proposed. (See § 63.92(b)(3)(xiii).) The public will have opportunity to comment on such Federal rules when they are proposed.

Adjustment for Additional Pollutants

Several commenters felt that the EPA should include an adjustment allowing for the regulation of pollutants not among those listed under section 112(b).

The EPA has chosen not to include such an adjustment at this time. This situation may be difficult for the many States that regulate pollutants not on the section 112(b) list, as those States may not incorporate requirements that do not relate to Federally listed pollutants in the Federally enforceable section of the part 70 permit and therefore State-only requirements for additional pollutants would need to be incorporated in a different section of the part 70 permit. See § 70.6(b)(2). Instead, the EPA encourages States with data that indicate a pollutant should be Federally regulated to submit a petition to the EPA to include such pollutants on the section 112(b) list.

D. Section 63.93—Approval of State Authorities That Substitute for a Section 112 Rule

This is the second of three approval options under this subpart. Under this option States are given the widest possible range of flexibility in seeking approval of authorities that differ significantly from an otherwise applicable Federal rule. The EPA will make a detailed and thorough evaluation of the State's submittal to ensure that it meets the stringency and other requirements of this section.

Need for Emission Point Basis Rather Than "Affected Source"

One commenter felt that § 63.93 should be deleted from the rule, because it allows stringency to be compared at an "affected source" level rather than for each emission point. The EPA disagrees with the view that this option should be deleted. Under § 63.93, a detailed demonstration is required that will ensure that any approved State alternative will achieve an equal or greater reduction in emissions. This section is further reinforced by requirements to address in detail the effects of alternative enforcement and compliance methods. The final rule continues to address stringency for § 63.93 on a source" basis. The term "affected source" has, however, been deleted from § 63.90(a), because there does not appear to be a compelling need to define the term in both subpart E and also in subpart A "General Provisions" of this part. The final rule will, as a result, rely on the definition in subpart A once it is promulgated. The rule was

proposed on August 11, 1993 (58 FR 42760).

For a given source category, the "affected source" definition will be specifically defined when the section 112 standard is promulgated for the category. In making stringency comparisons under § 63.93, the reviewer should therefore consult the appropriate subpart of part 63 for the "affected source" definition for the category in question.

Incorporation of Approved Rules

As discussed in the previous section of this preamble, several commenters suggested incorporation of an approved rule under the subpart containing the otherwise applicable Federal rule. The EPA agrees and will do so as appropriate.

Form of the Standard for Work Practice, Design, Operational or Equipment Standards

For approval under § 63.93, States are required to provide the EPA with a detailed demonstration showing that implementation and enforcement of State authorities results in as great or greater emission reductions (or other appropriate measures in the case of section 112(r)) for each affected source as the implementation and enforcement of the otherwise applicable Federal rule. In contrast, under the approval option in § 63.94, no detailed demonstration is necessary but States are required to express permit terms and conditions that result from the approved State program requirement in the form of the Federal standard.

Numerous commenters expressed concern about inflexibility that the "form of the standard" requirement imposes. Several commenters had specifically suggested the addition of a provision allowing for a source specific detailed demonstration of stringency in instances where the "form of the standard" requirement severely limited needed flexibility. To address the concerns about this inflexibility, the EPA is broadening the type of State authority that can be approved under § 63.93 for certain types of standards and under certain conditions.

The EPA agrees that under certain conditions, requiring States to write permit conditions in the form of the Federal standard could be unnecessarily inflexible. Those conditions are when the following circumstances exist together: (1) The EPA writes a work practice, equipment, design or operational standard (in other words, when the EPA does not write a standard based on performance, such as control efficiency or an emission rate) and (2) such a Federal standard does not address a State work practice, equipment, design or operational standard as either meeting or failing to meet the Federal standard. These conditions will generally only arise when a State has decided to require control equipment or practices which have been developed since the EPA promulgated the relevant standard. In such cases the State standard may be at least as stringent as the previously promulgated Federal standard but can not be expressed in the form of the Federal standard. The flexibility otherwise provided in § 63.94 here would not allow the State standard to be the basis for the permit in these cases since the State standard would not be able to be expressed in the form of the Federal standard.

In this rule as proposed, States would have had the opportunity to solve this problem by codifying their standard in a source category-specific rule through a State rulemaking and then seeking approval of that rule under § 63.93. Since many States regulate hazardous air pollutants through authorities which do not include source-category-specific rules, pursuit of approval under these circumstances would require a significant employment of resources for largely administrative purposes so that the State standard could be expressed as a source-category specific State rule for which the State could seek approval.

To address this difficulty, the EPA has revised § 63.93 to allow for slightly broader applicability of this section. Under the narrow circumstances discussed above, the EPA is not requiring the submission of a source-category-specific rule for approval under this section. Instead the EPA is willing to review and to consider for approval a specific application of broader State authorities under certain conditions as explained here. As at proposal, the EPA will only grant approval under this section in lieu of a single specific section 112 rule that specifies work practice or similar requirements. Approval of a specific application of broad State authorities will only be given to a State with a program already approved under § 63.94 to regulate the applicable source category, only for a source category that is not federally regulated by a performance based standard and only where the Federal standard has not addressed the State's particular approach to controlling emissions. In this case, a State need not submit a rule specifically and exclusively addressing the requirements of the Federal rule. Instead a State may submit for approval legally enforceable broader authorities which allow it to regulate the source category in question, identifying the sources in that source category, and specifying proposed section 112 permit terms and conditions (such as the controls that are required by application of those authorities) and the authorities which will assure adequate compliance and enforcement according to the provisions of this subpart and part 70. If the EPA approves a State's request in such a case, only the specific application of the State authorities to a single source category as approved will be Federally enforceable terms and conditions. If a State later revises its authorities to require different controls or compliance and enforcement measures, those changed requirements will not be federally enforceable unless the State submits documentation or a request under § 63.91(c) regarding revisions of State authorities. The source will remain subject to the approved requirements incorporated in its part 70 permit according to the provisions of part 70 unless the EPA disapproves the revision or otherwise finds that the authorities are inadequate and initiates withdrawal proceedings. The EPA has included in § 63.93 the types of "authorities" needed for approval. Authorities submitted under that section must meet the criteria of section 112(l)(5)(A), that is the authorities must be adequate to assure compliance by all sources subject to the request for approval with each applicable Federal standard, regulation or requirement. A threshold requirement for approvability is that State authorities must be legally enforceable by the State under State law. Such legally enforceable authorities may be statutes, rules, regulations, or other instruments that impose legally enforceable requirements.

For example, a State might have a single regulation that assesses risk at facilities that emit hazardous air pollutants and based on estimates of risk, requires specific emission rates or specific controls at particular facilities which might differ from facility to facility. The State's regulation might apply to a wide range of source categories in the State. If such a State initially received approval under § 63.94 for a State program that included a source category which was later regulated under a Federal equipment standard, approval under § 63.94 might provide very little flexibility to the State to require different types of equipment in lieu of equipment specified by the otherwise applicable Federal requirements. This might be especially problematic when a State sought to

require innovative controls not evaluated at the time of Federal standard promulgation because they were not yet developed. If a State can demonstrate to EPA, via the process described in § 63.93 that such controls resulted in emission reductions for all sources in the source category as great or greater than the emissions reductions the Federal standard would achieve, the EPA is willing to consider a request to approve the State authorities requiring such controls as Federally enforceable in lieu of the otherwise applicable Federal standard. Resulting terms and conditions would be incorporated in a part 70 permit. This would be an approval of a specific application of broad State authorities under the narrow circumstances described.

Thus, as described above, provisions for approval under § 63.93 has been revised to allow a State to request approval of a limited application of its general air toxics regulatory authority as that authority applies to a single source category. To do so, the State would need to meet the requirements of this section which call for, among other things, a detailed analysis of emission reductions that would result from both the Federal and State scenarios. Only the terms and conditions to be incorporated in the source's part 70 permit, as approved under this subpart for the single application of authorities for the single source category for which the request was submitted, would be federally enforceable.

Stringency Criterion for Accidental Release Prevention Programs

In terms of the ARP program, one comment indicated that States should not be allowed to submit ARP programs under § 63.93 because approval is unnecessary. Rather, the Federal and current State programs could be easily meshed together and the most stringent requirements of each be included. The commenter also pointed out that the criteria for approval of equivalent State programs are primarily based on the ability of the State program to achieve equivalent or better emission reductions and that this criterion makes little sense in the context of accidental releases.

The Agency disagrees that States do not now, or will not in the future, need the flexibility of submitting ARP programs for approval which differ from the Federal requirements. However, EPA recognizes that the criteria in the proposed rulemaking may not have been sufficiently broad to include all the requirements under the section 112(r) program. Thus, the Agency has added additional approval criteria to § 63.93 which are specific to the ARP program.

E. Section 63.94—Approval of a State Program That Substitutes for Section 112 Emission Standards

This is the third of the three approval options. It allows for a one-time approval of a legally binding commitment adopted through under State law to adequately regulate sources subject to hazardous air pollutant section 112 emission standards as specified under § 63.94(b)(2). This section applies only to sources for which part 70 permits will be issued by the State and which are subject to section 112 requirements expressed as terms and conditions of the part 70 permit. Part 70 permit requirements must be written in the form of the Federal standard which would be otherwise applicable to the source. This section may be used to approve standards corresponding to Federal section 112 (d), (f), or (h) standards only and can not be used to approve infrastructure rules such as those developed under sections 112(g), 112(i)(5) or 112(r).

Infrastructure Rules

Some commenters felt that the EPA could approve under this section requests for approval of infrastructure rules. As mentioned above, stringency requirements for approval under this section require that permit terms and conditions resulting from approval be expressed in the form of the Federal standard. Infrastructure rules may include requirements that can not be simply compared for stringency through a test of emission rates or control efficiencies.

In fact, some infrastructure rules provide guidelines for case-by-case determinations on controls where no simple stringency comparison can be made but rather the determinations must meet criteria specified in the applicable section 112 provisions. For these reasons, State infrastructure rules can only be approved under subpart E when they either adjust the Federal rule per § 63.92 or the State submits a detailed demonstration of stringency according to the provisions of § 63.93.

Stringency Comparison

As in the previous section, commenters questioned whether the basis for stringency comparisons should be at the source or emission point level. Approvals under this section require States to write permits in the form of the Federal standard. If the Federal standard requires for example, specific controls or emission rates from specific emission points, that form must be maintained in permits resulting from an approval under this section. If, on the other hand, a Federal standard has no requirements that apply at the emission point level, but instead stringency is measured at a more broadly defined source level, a State could choose to express terms and conditions at the source level also, as long as those terms and conditions were no less stringent than the Federal requirements and were expressed in the Federal form. This allows States to express terms and conditions with the same degree of flexibility that is allowed by the Federal standard.

Part 70—Approval Prior to Section 112(l) approval

As discussed earlier, commenters expressed preferences both for and against the requirement of part 70 program approval prior to a State receiving approval under this subpart. The primary Federal determination of stringency under this approval option occurs through EPA review of a part 70 permit with terms and conditions expressed in the form of the Federal standard. The EPA therefore finds that it is necessary for a State to be implementing an approved part 70 program before it would approve a request under this section for different but equally effective State programs. More specifically, approval under this section for this purpose would only apply to those sources for which the State is the part 70 permitting authority. This addresses any potential applicability issues that might arise from a partial or interim approval under part 70.

State Enforceability

Two commenters noted that States with existing hazardous air pollutant programs, which can include State statutes, regulations, or other requirements that limit the emissions of hazardous air pollutants from affected sources and that may be structurally dissimilar from section 112 regulations (e.g. risk-based standards) should be allowed the option to operate independently of and in addition to the Federal MACT standards and programs while at the same time maintaining Federal applicable requirements in part 70 operating permits. These State standards would be State enforceable only.

EPA agrees with this comment. Nothing in today's rule precludes a State from operating existing programs that may differ from federal section 112 emission standards and requirements as long as they are enforceable as State-only requirements. Such State-only requirements may be incorporated in a part 70 permit under § 70.6(b)(2). In

addition, as discussed previously, section 116 of the Act preserves the right of States to adopt and enforce standards or limitations as long as they are no less stringent than Federal section 112 standards or limitations.

F. Section 63.95—Additional Approval Criteria for a State Rule That Adjusts or Substitutes for the Federal Accidental Release Prevention Program

Section 63.95 contains specific approval criteria for the approval of State programs which adjust or substitute for the Federal accidental release prevention program.

Section 112(r) Registration of Facilities Under Section 112(l)

One comment disputed whether the proposed rule properly addressed the provision of section 112(l)(2) which directed the EPA to draft guidance under this section which "provides for" the registration of facilities producing, processing, handling, or storing over a threshold quantity of a substance listed under section 112(r). The comment stated that § 63.95 lacked sufficient specificity to fulfill the guidance required by the statute. The commenter suggested specific components of a registration program, including standards for outreach, verification of coverage through database crosschecking, and the specific contents of a registration form. The commenter suggested that by using the phrase "provide for" in the requirement to promulgate guidance, Congress did not intend for the EPA to delay informing affected parties of the minimum requirements of an acceptable program. The EPA generally disagrees with the comment that the EPA has failed to provide sufficient guidance to States as required by section 112(l)(2). However the EPA notes that it has made some modifications to the provisions of §§ 63.93 and 63.95 to clarify the regulatory provisions. Furthermore, the EPA believes that the publication of the proposed rule implementing section 112(r)(7)(B) provides additional guidance to States concerning the specific minimum contents of registration. Together, these actions provide not only for the guidance required by statute but also provide much of the supplementary specifics suggested by the commenter.

Today's rule requires a State agency seeking delegation of the Accidental Release Prevention Program to include procedures for registering stationary sources covered by the section 112(r) rules in a manner consistent with the registration requirements under those rules. Section 63.95(b)(2). In addition, to make clear that a State must include a procedure for registration in its application for delegation of the Accidental Release Prevention Program, § 63.95 requires a State to demonstrate authority and resources to enforce all core release prevention requirements. Furthermore, the rule requires a State to describe its outreach program.

The Agency has modified § 63.95 to clarify that a State seeking delegation of the Accidental Release Prevention Program must identify the State entity with which a source must register. Identifying the entity receiving the registration is a necessary aspect of describing the procedures by which a State would register subject sources. The Agency has determined that no specific standards for outreach or database crosschecking are appropriate because such activities are extremely State specific. Certain States may maintain computerized Emergency Planning and Community Right-to-know Act Tier 2 databases while others may be able to rely on Standard Industry Classification (SIC) codes, property tax filings, and other information for outreach purposes and for determining whether all covered sources are registered. However, a description of such outreach and oversight activities would be relevant in consideration of the adequacy of program resources.

The Agency set out proposed specific requirements for registration of risk management plans in the proposed rule implementing section 112(r)(7)(B) (proposed § 68.12). The proposed section 112(r)(7)(B) rule, if adopted, would require a stationary source that has over a threshold quantity of a substance listed pursuant to section 112(r)(3) to register with the Administrator within three years of the final rule's publication. The registration would contain identifying information about the source (name, street and mailing addresses, telephone number, contact persons, Dun and Bradstreet number, applicable SIC codes), data on listed substances present in above-threshold quantities, and a certification by the owner or operator concerning the accuracy of the information submitted and the submission of risk management plans to appropriate local, State and Federal authorities. Such data would need to be updated when it is no longer accurate. The proposed section 112(r)(7)(B) rule does not propose to require additional information concerning the plant's safety programs and surrounding populations because such data would be difficult to standardize for data management purposes. Furthermore, such information does not need to be included in the registration for right-to-know purposes because such information already would be available to the public in the risk management plans filed locally, with the State, and with the Chemical Safety and Hazards Investigation Board. Comments concerning the contents of registration submittal should be directed to the rulemaking docket for the section 112(r)(7)(B) proposed rule.

The Agency believes that today's rule and the discussion herein fulfills its duty to promulgate guidance that provides for registration of facilities that have more than a threshold of a section 112(r) regulated substance. The rule promulgated today unambiguously requires a State seeking delegation of a section 112(r) program to have an element providing for facility registration, which is consistent with the 1989 Senate Environment and Public Works Committee report explaining the guidance requirement. See S. Rep. 1630 at 193. The Agency interprets the requirement to provide guidance for registration of covered facilities to mean that the Agency must make clear that a State seeking a delegation of the section 112(r) program must have a registration element in its program.

The Agency does not believe that today's rule must detail the substantive data requirements for registration because such detail would be inconsistent with the structure of section 112(l) and section 112(r). Under section 112(r)(7)(B), all stationary sources that have over a threshold quantity of a substance regulated under section 112(r) must prepare a risk management plan. Sources that prepare risk management plans must register such plans with the Administrator. Section 112(r)(7)(B)(iii). The Agency interprets the registration of facilities mentioned in section 112(l)(2) to be the same registration as the registration of stationary sources required under section 112(r). Facilities described in section 112(l)(2) would not have a threshold quantity or more of a chemical unless the quantity would also trigger registration under section 112(r). To interpret section 112(l) to require a different registration than section 112(r) would require States opting to develop a delegated Accidental Release Prevention Program to run two redundant registration programs. Section 112(l) provides a means to delegate the section 112(r) registration requirement as part of a delegation of the Accidental Release Prevention Program. No commenter has suggested otherwise.

The statute provides the Agency with a different and more lengthy time frame to develop the section 112(r) registration requirements than it provides for the development of "guidance • • • useful to the States in developing programs for submittal." Section 112(l)(2). It would be a strained reading of the section 112(l) guidance requirement to say that the Agency must detail the specific registration requirements for State programs that elect to seek delegation of the Accidental Release Prevention Program prior to the Agency developing the actual registration requirement.

The Agency has provided useful guidance to the States concerning the registration requirement by promulgating this rule, discussing registration in today's preamble, and responding to this comment. The rule outlines the minimum content of a State delegation submittal and explicitly provides that such submittal must include a description of the State's registration process. Such description must include an identification of the State entity with which parties must register. Furthermore, as noted above, the Agency has discussed its most current view of the specific details of what registration will entail. Section 112(l) does not require the Agency to provide the specific elements of what information is necessary for facility registration. The 1990 Amendments leave the development of the specific elements of registration to a future section 112(r)(7) rulemaking.

Section 112(r) Authorities

One commenter indicated that States should be required to obtain the authorities for the general duty and emergency order authority provisions found in section 112(r)(1) and (9) respectively, because State agencies will often receive citizen complaints about hazards and will have more of the expertise necessary to use such authorities properly than the EPA's regional personnel. The Agency believes, however, that States should be given the option to have authorities beyond the core elements necessary to administer the program. While the general duty and emergency order authority provisions could enhance the State program by providing them with additional compliance and enforcement tools, they are not essential elements which would be required to maintain a functioning ARP program at the State level.

Further, many States already have emergency order authorities under other environmental statutes and may not find section 112(r)(9) critical to the administration of their program. In terms of the general duty provisions, some States are prohibited from having general duty authorities.

Section 112(r) Enforcement Authorities

One commenter indicated that the EPA should specifically advise States that they must have the authority to impose the penalties required under the 1990 Amendments for violators of section 112(r). The proposed rulemaking contained specific language which indicates that the State submission would need to contain a demonstration of the State's authority to enforce all accidental release prevention requirements including a risk management plan auditing strategy that is consistent with the proposed section 112(r)(7) rule and this language has been retained in the final rule. Section 63.95(b)(3).

Interface Between Section 112(r) and Part 70

One commenter suggested that the Agency should require States to establish appropriate interagency agreements which would promote the exchange of information between the administering agency and the permitting agency if they are different. The Agency agrees that information flow is critical if the implementing State agency is not the permitting agency. This is particularly important since section 112(r) requires the development, submittal, and implementation of a risk management plan which must be addressed in a part 70 permit for subject sources. Consequently, the Agency has added language to § 63.95 which requires a description of any coordination mechanisms the implementing agency will use with the air permitting program, provided it is not the implementing agency.

G. Section 63.96—Review and Withdrawal of Approval

This section discusses terms for the EPA review of the implementation and enforcement of approved State rules and programs and describes the process and criteria for EPA withdrawal of a State approval.

Source Uncertainty About Withdrawals

Numerous commenters expressed concern over the uncertainty that sources might face when approval of a rule or program to which they are subject is withdrawn.

Generally, there are three reasons upon which the Administrator might base a withdrawal. The State might lack adequate authority or resources, the State might not be implementing or enforcing the rule or program adequately, or the rule or program might be found to be less stringent than the otherwise applicable Federal rule or program, perhaps, for example, as a result of EPA review sometime after approval.

If the Administrator withdraws a program for the third of these three reasons, sources' permits will need to be reopened according to the provisions of part 70 and the underlying Federal standard will become the applicable Federally enforceable requirement again on the date set forth by the Administrator in a compliance schedule published concurrently with the withdrawal.

This withdrawal and permit reopening would be due to the fact that the rule or program was found to be less stringent than the Federal standard and is, therefore, no longer appropriate as a substitute for the Federal standard in the part 70 permit. In this case, the permits of sources subject to the requirement will be reopened according to procedures specified in § 70.7(f) because the withdrawal amounts to a finding by the EPA that the permit no longer assures compliance with the applicable requirement consistent with § 70.7(f)(iv). The withdrawal also results in additional requirements becoming applicable to the source, which triggers a reopening under § 70.7(f)(1)(i). Sources would be required to come into compliance by the date specified in the **Federal Register** withdrawal notice regardless of whether or not the permit has been reopened. Since the Federal standard is considered a new requirement, the permit shield in § 70.6(f) would not apply. When only the first or second reasons are cited by the Administrator, and the stringency of the State standard is not in question, reopening of part 70 permits will not be required for sources affected by withdrawal of an approval under § 63.92 or § 63.94. Any source that is in compliance with permit conditions established under such approvals will also be in compliance with the underlying Federal standard upon withdrawal, because a source in compliance with a no less stringent State standard that is in the same form as the Federal standard is also in compliance with the Federal standard. Approved State standards under § 63.92 and permit terms and conditions resulting from an approved State program under § 63.94 are necessarily in the same form as the otherwise applicable Federal standard.

The situation is different for approvals under § 63.93, in particular for work practice, design, operational or

equipment standards because such approved State standards would commonly not be in the same form as the otherwise applicable Federal standard. To assure sources of greater certainty, EPA has revised § 63.96 to provide that permits need not be reopened if the Administrator finds at the time of withdrawal that the approved State rule is still demonstrated to be no less stringent than the otherwise applicable Federal standard. Section 63.96(b)(5). In such cases the Administrator will approve as equivalent according to the provisions of the appropriate subpart of part 63 the equipment, design, work practice or operational standard, emission limitation, or other requirement upon which the original approval was based. This is in accordance with the provisions of section 112(h)(3) for alternative standards. Such an equivalence determination was proposed in § 63.6(g) of subpart A of this part (58 FR 42760 August 11, 1993).

To further increase certainty for sources affected by a withdrawal, the EPA will publish an expeditious schedule for compliance by sources for both involuntary and voluntary withdrawals. Included in this schedule are interim emission limits, as appropriate, to limit emissions for the time period between withdrawal and the deadline for the source coming into compliance with the Federal standard. Sources must be operated in a manner consistent with good air pollution control practices for minimizing emissions at all times during this transition period. The schedule will be published in the **Federal Register** notice withdrawing the approval.

Audits

One commenter noted that the EPA should commit to audits, at least every 3 years, of programs which implement any averaging allowed in approved rules. Today's rule provides that the EPA "may at any time * * * review the adequacy of implementation and enforcement of an approved rule or program * * *". The EPA believes that today's rule provides the appropriate degree of flexibility in performing periodic reviews and allowing the EPA to determine on a case-by-case basis the frequency of those reviews.

One commenter asked the EPA to consider employing an auditing program instead of individual permit reviews. As allowed under § 63.96(a), the EPA intends to establish a program for a review of approved rules and programs and the audit of permits that result from such approvals. Such a program, however, can not replace the EPA's authority to review and potentially veto any rule or program approved under subpart E if and when the EPA finds such review to be necessary. In addition, § 70.10 provides additional protection through Federal oversight of State part 70 programs.

H. Other Comments

Potential To Emit

The May 19, 1993 proposal, requested comment on the potential to emit definition and how it related to submittals under section 112(l). The potential to emit issue, including concerns raised by comments to the subpart E proposal on this issue will not be addressed here but rather will be addressed in a later rulemaking. The issue was also discussed in the proposal for the General Provisions under subpart A of this part (58 FR 42760, proposed August 11, 1993). Since the potential to emit issue is currently under discussion, the EPA is deferring discussion of that issue at this time in this preamble.

Alternative Equipment Under Section 112(h)(3)

One commenter noted that the form of the standard limitation on State authority imposed by § 63.94 diminishes the flexibility in encouraging alternative technologies. The commenter believes that this approach is inconsistent with the fundamental policy goals of the CAA, including the goal of pollution prevention. The commenter feels that State programs should be allowed by the proposed rule to approve alternative technologies, particularly for equipment standards consistent with section 112(h)(3) of the Act.

Section 112(h) of the Act allows the EPA to promulgate equipment standards, in cases where an emission limitation is not feasible. An example of this type of equipment standard is the standard recently promulgated for perchloroethylene dry cleaning facilities (58 FR 49354, September 22, 1993). Under section 112(h)(3) of the Act, sources may request permission from the EPA for use of an alternative means of control. Procedures for review of these requests by the EPA have been proposed in § 63.6(g) of subpart A of this part (58 FR 42760 August 11, 1993).

The EPA wishes to clarify in this rulemaking, the process for making these section 112(h)(3) equivalency determinations for a State that has an approved program under § 63.94, or for a State that believes a given technology would satisfy the requirements of § 63.93. In the final rule for perchloroethylene dry cleaners (58 FR 49354, 49371, September 22, 1993), the EPA indicated that "Section 112(l) of the Act would allow a State to request approval of a State's program that permits a source to seek permission to use an alternative means of emission limitation under section 112(h)(3), provided that the State demonstrated that its program would be no less stringent and that certain conditions were met."

The EPA is here in this discussion further clarifying the procedures by which a State may seek and obtain approval of such a program under section 112(l).

It is unlikely that, for an equipment standard promulgated in accordance with section 112(h) of the Act, there would be an alternative means of control that could satisfy the § 63.94 requirement that the program express the limitation in the same "form as the Federal standard." Accordingly, § 63.94 approval by itself would likely not be sufficient to provide for section 112(h)(3) equivalency determinations. There are, however, two other avenues for an equivalency finding that are provided in today's rule.

First, as described above (preamble section IV), § 63.93 has been modified to provide a means for approval of work practice, equipment, or similar standards that do not require the State to submit a category-specific rule. In order to use this process, the State must have prior approval under § 63.94, and must identify in its submittal under § 63.93, (1) the specific work practice, design, equipment or operational standard that would replace the Federal requirement, (2) a specific description of the State authorities that would be exercised, and (3) proposed part 70 permit terms and conditions. Once approved, the State equipment standard would become the applicable requirement.

Second, the State may develop a State rule containing the alternative equipment limitation and provide a detailed demonstration in accordance with § 63.93 that the rule is no less stringent than the Federal standard. A source seeking permission to use an alternative means of emission limitation under section 112(h)(3) would thus first request permission from the State, demonstrating that the subject alternative means is no less stringent than the Federal requirement. The State would then seek approval from the EPA for that kind of equipment or alternative means of emission limitation.

Currently, the EPA does not delegate authority to determine equivalency of emission control technologies to the States. The February 1983 "Good

Practices Manual for Delegation of NSPS and NESHAPS", reserved to the EPA the determination of equivalency for design, equipment, or work place standards that will achieve a reduction in emissions as allowed for in section 112(h)(3) of the Act to the Administrator because these determinations require notice and opportunity for comment and impact National consistency of standards. While the EPA continues to retain the authority for this decision process, the EPA is providing as much flexibility as possible to the State and sources to receive approval of an equivalent emission control technology under subparts A and E of part 63.

Guidance on Acceptable Controls

Commenters noted that to reduce the paperwork burden and enhance national consistency, the EPA should provide guidance to States regarding acceptable controls on a source category basis. The EPA will usually provide information regarding acceptable controls in MACT rules (reference control technologies). Therefore, the EPA encourages States to provide comments to EPA on alternative compliance during development of MACT standards so that alternatives will receive the fullest possible consideration.

Approvals Should Be for Entire Rules

Commenters expressed concern that approval under section 112(l) should be for entire rules and not for individual provisions within rules.

In accordance with section 112(l)(1), the EPA has allowed for approval of State provisions which meet the stringency requirements specified in this section 112(l) rule and thus as previously described to become federally enforceable. This subpart provides flexibility to the states in submitting programs for approval and also minimizes dual regulation by providing a mechanism to approve those portions of existing State rules which meet the approval criteria specified in the section 112(l) rule. Determination of stringency as required under section 112(l)(1) is predicated on a corresponding Federal standard, rule, or requirement. As the section 112 regulations are developed, elements relevant to stringency determinations will be included, and State rules submitted for approval may be compared with the corresponding Federal requirements.

Notice of Delegation

One commenter noted that the EPA must provide clear notice of rule applicability, effectiveness, and enforceability by providing a notice of delegation which clearly states which Federal or State rules remain in effect and whether they are enforceable by the EPA or the State.

The EPA agrees with this comment and the **Federal Register** notice of approval will specify this information. In addition, the EPA has added § 63.90(d) to make clear that approved rules and requirements are Federally enforceable.

Exemption of Electric Utility Steam Generating Units Exemption of Sources of Radionuclide Emissions

One commenter noted that electric utility steam generating units are exempt under section 112(n) which provides for such exemption unless and until the EPA finds regulation to be appropriate and necessary after considering the results of a study currently being performed. The commenter stated that therefore the EPA can not enforce State regulation of such units at this time. Additionally, a commenter noted that radionuclide emissions from facilities licensed by the Nuclear Regulatory Commission (NRC) should be exempted per section 112(d)(9).

The EPA agrees with these exclusions from subpart E regulation at this time according to the provisions of section 112(n) and section 112(d)(9). Under section 112(n), no Federal standard will be promulgated until some future time, and therefore no stringency comparison can be made at this time for a State rule applicable to sources subject to section 112(n).

One commenter argued that the EPA should not enforce State regulations of radionuclide emissions from facilities licensed by the Nuclear Regulatory Commission ("NRC"), citing the intention of Congress in section 112(d)(9) of the 1990 Amendments to avoid duplicative regulation of NRC licensees and the pending EPA proposal to rescind 40 CFR part 61, subpart I, for nuclear power reactors. Under section 112(d)(9), the EPA may decline to regulate radionuclide emissions from a particular category of NRC licensees if it determines by rule that the NRC program for that category of licensees provides an ample margin of safety to protect human health. Thus, before the EPA may decline to regulate radionuclide emissions from a category of NRC licensees, it must examine the NRC regulatory program for that category and determine that it provides a level of protection equal to or greater than would be provided by implementation of the EPA standard. Although the EPA has not yet made the requisite finding for any category of NRC licensees, it has proposed to rescind 40 CFR part 61, subpart I, as applied to nuclear power reactors (56 FR 37196, August 5, 1991) and to NRC licensees other than nuclear power reactors (57 FR 56877, December 1, 1992), and to rescind 40 CFR part 61, subpart T (56 FR 67561), December 31, 1991), which governs inactive uranium mill tailings disposal sites.

The EPA agrees with the commenter that recognition and enforcement by the EPA of State regulations of radionuclide emissions from NRC licensees which differ from the EPA standards is not consistent with the Congressional objective to eliminate unnecessary duplicative regulation of NRC licensees. Acceptance of alternative State standards or programs for such emission could also complicate the rescission of any Federal standards for which the EPA ultimately makes the necessary finding concerning the NRC program. So long as the EPA standards governing radionuclide emissions for NRC licensees are in effect, States may request that the EPA delegate enforcement of such standards pursuant to § 63.91, but the EPA will not grant requests to adjust such standards or to substitute State authorities or programs for such standards pursuant to § 63.92, § 63.93, or § 63.94. The EPA has added a provision to § 63.90 clarifying this issue.

Of course, in those instances where a State may lawfully adopt differing or more stringent standards regulating radionuclide emissions from NRC licensees under its own authorities, the State may then include terms and conditions implementing such State standards in the State-enforced section of the permit for each facility. Moreover, the decision by the EPA not to adopt or enforce State standards governing radionuclide emissions from NRC licensees does not affect the ability of the States to seek EPA recognition and enforcement of other State standards or programs which may apply to NRC licensees.

High Risk Point Source Program

One commenter pointed out that section 112(l)(2) requires the EPA to publish guidance that includes as an element "an optional program begun in 1986 for the review of high-risk point sources of air pollutants including, but not limited to, hazardous air pollutants listed pursuant to (section 112(b))."

This final rule, along with a guidance document addressing the high-risk point source program described in section 112(l)(2), will fulfill the requirement to "publish guidance useful to the States in developing programs for submittal

under (section 112(l))." A summary of the high-risk point source program guidance document, which will be available concurrently with the final rule is discussed below in section V of this preamble.

V. Additional Guidance

As stated previously in this preamble, additional guidance is concurrently published with this final rule. Specifically: (1) Guidance to review high-risk point sources; (2) information about establishing and maintaining various technical assistance activities, including an air toxics clearinghouse; and (3) enabling guidance outlining procedures, roles and responsibilities for section 112(l) approvals. These guidance documents are separate documents which are available with the promulgation of today's rule and may be revised and updated from time to time as appropriate. Each of these documents is discussed here.

A. High-Risk Point Source Guidance

Purpose of High Risk Point Source Guidance

The purpose of the High Risk Point Source (HRPS) guidance is to outline a methodology that State agencies may wish to employ in order to assess the risks from potentially high-risk point sources. The EPA envisions several uses of this program, particularly for those agencies that do not already have comprehensive air toxics programs. First, the guidance can help agencies evaluate and regulate sources which will not be regulated under the Federal program. As an example, a listed source category may consist of major sources (those that emit greater than 10 tons per year of one hazardous air pollutant (HAP), or 25 tons per year of a combination of HAP's), and area sources (sources of a HAP that are not major). The major sources in the category will be covered by a section 112(d) standard, but the area sources may not be regulated unless the EPA finds that such sources present a threat of adverse effects to human health or the environment warranting Federal regulation under section 112 (section 112(c)(3)) (see source category list (57 FR 31576, July 16, 1992). In this case, the State agency may choose to assess a source to determine whether the State may wish to pursue state mandated controls. States may also undertake such analyses to examine residual risk after installation of Federal controls or risk from pollutants not on the section 112(b) list.

Second, an agency may wish to regulate sources under a faster timetable than the Federal program. Section 112(e) of the 1990 Amendments requires the EPA to regulate source categories on a specific schedule, either within 2, 4, 7, or 10 years after the date of enactment (November 15, 1990). A State may wish to apply the methodology offered in the HRPS guidance to evaluate a source or sources to determine whether early controls required at the State level are warranted. Similarly, States may wish to evaluate sources in order to set residual risk standards sooner than the Federal program. Section 112(f) requires the EPA to address the issue of residual risk eight years after the promulgation of a MACT standard. A State Agency may wish to examine the need for a residual risk examination before the eight year Federal analysis would be conducted.

Third, in response to public concern, agencies may wish to determine the risks associated with sources of air toxics, for a number of reasons, including questions from the public raised during part 70 permit hearings, or in response to public inquiries as to the safety of ambient air. A HRPS program can also increase environmental equity in that it helps an agency address, for example, a single source that may otherwise be missed because it was not in a source category to be regulated under the Federal regulatory program. See 136 Cong. Rec. S16978 (daily ed. Oct. 27, 1990) (Clean Air Conference Report, Air Toxics).

Finally, the methodology and resources presented in the HRPS guidance can add to the available tools States can use to evaluate the potential for adverse health impacts and protect the public health from local sources of HAPs. Information collected from the HRPS evaluations will be useful to the public, the State agencies themselves and to the Federal program.

The use of this guidance does not mandate regulation. It is designed to provide ideas for developing or expanding upon State high-risk point source programs in keeping with the provisions of section 112(l)(2) that specify the optional nature of the high-risk point source program. Publication of this document fulfills the requirement of section 112(l)(2) to publish guidance that includes as an element the optional high-risk point source program begun in 1986.

Organization of this Document

The document that the EPA developed to fulfill Congress's directive concerning the HRPS program under section 112(l)(2) is based in large part on information and documentation that the EPA has developed from its experience with the program since the program's inception in 1986. See S. Rep. at 193–94 which describes the agency's efforts and support for the HRPS program. The document begins with a discussion of policy issues: how to determine what chemicals to assess, how to choose sources to assess, and how to communicate program objectives and risks to health. The document then outlines a tiered methodology agencies may choose to follow to determine whether the risk from a particular source (or sources) is significant, and worthy of regulation. The reader is then directed to appropriate EPA documents and services to assist in evaluating health effects from High Risk Point Sources.

B. Technical Assistance Activities

Several sources of technical assistance are provided by the EPA to State and local agencies. Each is briefly described.

Air Risk Information Support Center (Air RISC)

Developed to assist State and local air pollution agencies and EPA Regional offices on technical matters pertaining to health, exposure, and risk assessments for toxic air pollutants, the primary goal of Air RISC is to serve as a focal point for obtaining information and, where needed, provide assistance in the review and interpretation of that information.

Emission Measurement Technical Information Center (EMTIC)

Created for the purpose of promoting consistent and accurate emissions test method application in the development and enforcement of national, State, and local emission prevention and control programs, the EMTIC is an information exchange network that communicates the EPA emissions measurement technology to the emissions measurement community. The EMTIC provides information in the form of publications, videos, workshops, computer information databases, and support projects.

National Air Toxics Information Clearinghouse (NATICH)

This clearinghouse is intended to facilitate information exchange among State and local agencies, and between the EPA and State and local agencies, and to minimize duplication of effort. The Clearinghouse consists of a computerized data base which contains information on potentially toxic air pollutants, hard copy reports of information from the data base, special reports, and a bi-monthly newsletter.

Clearinghouse for Inventories/Emission Factors (CHIEF)

This clearinghouse contains the latest information on air emission inventories and emission factors. It provides access to tools for estimating emission of air pollutants and performing air emission inventories for both criteria and toxic pollutants.

C. Enabling Guidance

The enabling guidance was developed as a further tool to assist State and local agencies interested in receiving approval of State programs under the process described in subpart E of this part. Also included is detailed information for procedures for receiving delegation for unchanged Federal section 112 rules. Included in this document is information on the following: (1) Specific roles and responsibilities of State and the EPA offices; (2) specifics regarding "detailed demonstrations" under § 63.93 submittals and "form of the standard" under § 63.94 submittals; (3) Forms used in submittals; and (4) commonly asked questions regarding section 112(l) submittals.

D. Accessing Additional Guidance

Technology Transfer Network (TTN) Bulletin Board System

This network provides information and technology exchange in different areas or air pollution control, ranging from emission test methods to regulatory air pollution control models. The individual bulletin boards offered with respect to air toxics are: (1) Emission Measurement Technical Information Center (EMTIC); (2) National Air Toxics Information Clearinghouse (NATICH); (3) Clean Air Act Amendments (1990 Amendments) and (4) Clearinghouse for Inventories/ Emission Factors (CHIEF). The access number to the bulletin board system is 919–541–5742. If problems are encountered accessing the bulletin board, call 919–541–5384.

High Risk Point Source Guidance

The guidance document for the review of high risk point sources is available in Air Docket A–92–46. It can also be found on the EPA Technology Transfer Network (TTN) bulletin board system in the 1990 Amendments section under "Title III Policy and Guidance". The EPA Publication number for this document is EPA–453/R–93–039. To obtain copies, contact the EPA Library in Research Triangle Park, North Carolina at 919–541–2777 or the National Technical Information Service (NTIS) at 800–553–6847. For other questions regarding this document, contact Kelly Rimer at 919–541–2962.

Air RISC

Air RISC services include a hotline, detailed technical assistance, and general technical assistance. Contact the hotline at 919–541–0888 and requesting the specific type of assistance needed.

Enabling Guidance

The enabling guidance document for Approval of State Programs and Delegation of Federal Authorities is available in Air Docket A–92–46. It can also be found on the TTN Bulletin Board system noted in the above paragraph. The EPA Publication number for this document is EPA–453/R–93–040 and can be obtained from the EPA Library or NTIS. For questions regarding this document, contact Sheila Milliken at 919–541–2625.

E. Grants

Section 112(l)(4) gives the Administrator the discretion to award grants to States to support the development of air toxics programs, including high-risk point source programs and the development and implementation of areawide area source programs pursuant to subsection 112(k).

The EPA has, for a number of years, supported air toxics program activities under State and local assistance grants issued pursuant to section 105 of the Act. The EPA will continue to evaluate, in close cooperation with the States, the types of activities that can and should be supported in this manner. The EPA is currently reviewing the exact mechanisms to be used for this purpose, including any administrative changes that may be required to track the grants pursuant to section 112(l)(4) authority instead of under section 105.

VI. Administrative Requirements

A. Docket

The docket for this regulatory action is A–92–46. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed rulemaking. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process, and

(2) To serve as the record in case of judicial review. The docket is available for public inspection at the EPA's Air Docket, which is listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, 10/04/94), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligation of recipients thereof;

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order."

Pursuant to the terms of Executive Order 12866, the OMB has notified the EPA that this action is a "significant regulatory action" within the meaning of the Executive Order. For this reason, this action was submitted to the OMB for review. Changes made in response to the OMB suggestions or recommendations will be documented in the public record.

Any written comments from OMB to the EPA and any written EPA response to any of those comments will be included in the docket listed at the beginning of today's notice under **ADDRESSES**. The docket is available for public inspection at the EPA's Air Docket Section, (LE–131), ATTN: Docket No. A–92–46, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

C. Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), Federal agencies must obtain the OMB clearance for collection of information from ten (10) or more non-Federal respondents. Under this final rule, each State or other air pollution control agency which elects to develop a section 112(l) program, or to take any other approved actions under section 112(l), shall be required to submit to the Administrator a program, written findings, schedules, plans, statements, and/or other documentation required for approval of the submitted program or action. The effect of this rule is to subject those States and other air pollution control agencies utilizing section 112(l) to the

informational requirements of this rule in order to assure that the requirements of a section 112(l) program or approved action have been met under section 112(l)(5) of the Act. These statutory requirements for approval give rise to the informational requirements of this rule.

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned the OMB control number 2060–0264.

The burden to States and other air pollution control agencies for the collection of information under this rule for the first year is estimated to be a maximum of 1901 hours per State or agency. This estimate includes time for rule interpretation, analysis and/or revision of state or local legislative authority, development of a program and schedule of implementation, as well as demonstrations of adequate resources, compliance and enforcement. Since most of these requirements are not recurring, the burden will decrease significantly in subsequent years.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Chief, Information Policy Branch (2136), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

D. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, whenever an Agency publishes any proposed or final rule in the **Federal Register**, it must, except under certain circumstances, prepare a Regulatory Flexibility Analysis (RFA) that describes the impact of the rule on small entities (i.e., small businesses, organizations, and governmental jurisdictions). That analysis is not necessary, however, if an Agency's Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The EPA believes that there will be no impact on any small entities as a result of the promulgation of this rule since all the entities which would have the authority to accept partial or complete delegation of the Administrator under section 112(l) of the Act are States and other governmental jurisdictions whose populations exceed 50,000 persons. With no impacts expected on entities whose populations are less than 50,000, a RFA is not required by law. What follows is the certification of the Administrator that an RFA is not required with the promulgation of this rule. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities.

E. Review

This regulation will be reviewed 9 years from the date of promulgation. This review will include an assessment of such factors including overlap with other programs, the existence of alternative methods, enforceability, and result of section 112 standards review.

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 63

Environmental protection, Administrative practices and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 15, 1993.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-1, 300j-2, 300j-3, 300j-4, 300j-9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by adding a new entry to the table under the indicated heading to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
National Emission Standards for Hazardous Air Pollutants for Source Categories	
63.91—63.96	2060–0264
* * * * *	

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

2. Part 63 is amended by adding subpart E to read as follows:

Subpart E—Approval of State Programs and Delegation of Federal Authorities

Sec.

§ 63.90 Program overview.

The regulations in this subpart establish procedures consistent with section 112(l) of the Clean Air Act (Act) (42 U.S.C. 7401–7671q). This subpart establishes procedures for the approval of State rules or programs to be implemented and enforced in place of certain otherwise applicable section 112 Federal rules, emission standards or requirements (including section 112 rules promulgated under the authority of the Act prior to the 1990 Amendments to the Act). Authority to implement and enforce section 112 Federal rules as promulgated without changes may be delegated under procedures established in this subpart. This subpart also establishes procedures for the review and withdrawal of section 112 implementation and enforcement authorities delegated through this subpart.

(a) *Definitions.* The following definitions apply to this subpart.

Applicability criteria means the regulatory criteria used to define all emission points within all affected sources subject to a specific section 112 rule.

Approval means a determination by the Administrator that a State rule or

program meets the criteria of § 63.91 and the additional criteria of either § 63.92, § 63.93 or § 63.94, where appropriate. For accidental release prevention programs, the criteria of § 63.95 must also be met.

Compliance and enforcement measures means requirements within a rule or program relating to compliance and enforcement, including but not necessarily limited to monitoring, test methods and procedures, recordkeeping, reporting, compliance certification, inspection, entry, sampling or accidental release prevention oversight.

Level of control means the degree to which a rule or program requires a source to limit emissions or to employ design, equipment, work practice, operational, accident prevention or other requirements or techniques (including a prohibition of emissions) for:

(1)(i) Each hazardous air pollutant, if individual pollutants are subject to emission limitations, and

(ii) The aggregate total of hazardous air pollutants, if the aggregate grouping is subject to emission limitations, provided that the rule or program would not lead to an increase in risk to human health or the environment; and

(2) each substance regulated under section 112(r).

Local agency means a local air pollution control agency or, for the purposes of § 63.95, any local agency or entity having responsibility for preventing accidental releases which may occur at a source regulated under section 112(r).

Program means, for the purposes of an approval under § 63.94, a collection of State statutes, rules or other requirements which limits or will limit the emissions of hazardous air pollutants from affected sources.

Stringent or stringency means the degree of rigor, strictness or severity a statute, rule, emission standard or requirement imposes on an affected source as measured by the quantity of emissions, or as measured by parameters relating to rule applicability and level of control, or as otherwise determined by the Administrator.

(b) *Local agency coordination with state and territorial agencies.* Local agencies submitting a rule or program for approval under this subpart shall consult with the relevant State or Territorial agency prior to making a request for approval to the Administrator. A State or Territorial agency may submit requests for approval on behalf of a local agency after consulting with that local agency.

(c) *Authorities retained by the Administrator.* (1) The following authorities will be retained by the Administrator and will not be delegated:

(i) The authority to add or delete pollutants from the list of hazardous air pollutants established under section 112(b);

(ii) The authority to add or delete substances from the list of substances established under section 112(r);

(iii) The authority to delete source categories from the Federal source category list established under section 112(c)(1) or to subcategorize categories on the Federal source category list after proposal of a relevant emission standard;

(iv) The authority to revise the source category schedule established under section 112(e) by moving a source category to a later date for promulgation; and

(v) Any other authorities determined to be nondelegable by the Administrator.

(2) Nothing in this subpart shall prohibit the Administrator from enforcing any applicable rule, emission standard or requirement established under section 112.

(3) Nothing in this subpart shall affect the authorities and obligations of the Administrator or the State under title V of the Act or under regulations promulgated pursuant to that title.

(d) *Federally-enforceable requirements.* All rules and requirements approved under this subpart and all resulting part 70 operating permit conditions are enforceable by the Administrator and citizens under the Act.

(e) *Standards not subject to modification or substitution.* With respect to radionuclide emissions from licensees of the Nuclear Regulatory Commission or licensees of Nuclear Regulatory Commission Agreement States which are subject to 40 CFR part 61, subpart I, T, or W, a State may request that the EPA approve delegation of implementation and enforcement of the Federal standard pursuant to § 63.91, but no changes or modifications in the form or content of the standard will be approved pursuant to § 63.92, § 63.93, or § 63.94.

§ 63.91 Criteria common to all approval options.

(a) *Approval process.* To obtain approval under this subpart of a rule or program that is different from the Federal rule, the criteria of this section and the criteria of either § 63.92, § 63.93 or § 63.94 must be met. For approval of State programs to implement and enforce Federal section 112 rules as promulgated without changes (except for accidental release programs), only the criteria of this section must be met. For approval of State rules or programs to implement and enforce the Federal accidental release prevention program as promulgated without changes, the requirements of this section and § 63.95 must be met. In the case of accidental release prevention programs which differ from the Federal accidental release prevention program, the requirements of this section, § 63.95, and either § 63.92 or § 63.93 must be met. For a State's initial request for approval, and except as otherwise specified under § 63.92, § 63.93, or § 63.94 for a State's subsequent requests for approval, the approval process will be the following.

(1) Upon receipt of a request for approval, the EPA will review the request for approval and notify the State within 30 days of receipt whether the request for approval is complete according to the criteria in this subpart. If a request for approval is found to be incomplete, the Administrator will so notify the State and will specify the deficient elements of the State's request.

(2) Within 45 days after receipt of a complete request for approval, the Administrator will seek public comment for a minimum of 30 days on the State request for approval. The Administrator will require that comments be submitted concurrently to the State.

(3) If, after review of public comments and any State responses to comments submitted to the Administrator within 30 days of the close of the public comment period, the Administrator finds that the criteria of this section are met, the State rule or program will be approved by the Administrator under this section, published in the **Federal Register**, and incorporated directly or by reference, in the appropriate subpart of part 63. Authorities approved under § 63.95 will be incorporated pursuant to requirements under section 112(r).

(4) Within 180 days of receiving a complete request for approval, the Administrator will either approve or disapprove the State rule or program.

(5) If the Administrator finds that any of the criteria of this section are not met, or any of the criteria of either § 63.92, § 63.93 or § 63.94 under which the request for approval was made are not met, the Administrator will disapprove the State rule or program. If a State rule or program is disapproved, the Administrator will notify the State of any revisions or additions necessary to obtain approval. Any resubmittal by a State of a request for approval will be

considered a new request under this subpart.

(6) If the Administrator finds that; all of the criteria of this section are met; and all of the criteria of either § 63.92, § 63.93 or § 63.94 are met, the Administrator will approve the State rule or program and thereby delegate authority to implement and enforce the approved rule or program in lieu of the otherwise applicable Federal rules, emission standards or requirements. The approved State rule or program shall be Federally enforceable from the date of publication of approval. When a State rule or program is approved by the Administrator under this subpart, applicable part 70 permits shall be revised according to the provisions of § 70.7(f) of this chapter. Operating permit conditions resulting from any otherwise applicable Federal section 112 rules, emission standards or requirements will not be expressed in the State's part 70 permits or otherwise implemented or enforced by the State or by the EPA unless and until authority to enforce the approved State rule or program is withdrawn from the State under § 63.96. In the event approval is withdrawn under § 63.96, all otherwise applicable Federal rules and requirements shall be enforceable in accordance with the compliance schedule established in the withdrawal notice and relevant part 70 permits shall be revised according to the provisions of § 70.7(f) of this chapter.

(b) *Criteria for approval.* Any request for approval under this subpart shall meet all section 112(l) approval criteria specified by the otherwise applicable Federal rule, emission standard or requirements and all of the approval criteria of this section. The State shall provide the Administrator with the following.

(1) A written finding by the State Attorney General (or for a local agency, the General Counsel with full authority to represent the local agency) that the State has the necessary legal authority to implement and to enforce the State rule or program upon approval and to assure compliance by all sources within the State with each applicable section 112 rule, emission standard or requirement. At a minimum, the State must have the following legal authorities concerning enforcement:

(i) The State shall have enforcement authorities that meet the requirements of § 70.11 of this chapter.

(ii) The State shall have authority to request information from regulated sources regarding their compliance status.

(iii) The State shall have authority to inspect sources and any records required to determine a source's compliance status.

(iv) If a State delegates authorities to a local agency, the State must retain enforcement authority unless the local agency has authorities that meet the requirements of § 70.11 of this chapter.

(2) A copy of State statutes, regulations and other requirements that contain the appropriate provisions granting authority to implement and enforce the State rule or program upon approval.

(3) A demonstration that the State has adequate resources to implement and enforce all aspects of the rule or program upon approval, which includes:

(i) A description in narrative form of the scope, structure, coverage and processes of the State program;

(ii) A description of the organization and structure of the agency or agencies that will have responsibility for administering the program; and

(iii) A description of the agency staff who will carry out the State program, including the number, occupation, and general duties of the employees.

(4) A schedule demonstrating expeditious State implementation of the rule or program upon approval.

(5) A plan that assures expeditious compliance by all sources subject to the rule or program upon approval. The plan should include at a minimum a complete description of the State's compliance tracking and enforcement program, including but not limited to inspection strategies.

(6) A demonstration of adequate legal authority to assure compliance with the rule or program upon approval. At a minimum, the State must have the following legal authorities concerning enforcement:

(i) The State shall have enforcement authorities that meet the requirements of § 70.11 of this chapter.

(ii) If a State delegates authorities to a local agency, the State must retain enforcement authority unless the local agency has authorities that meet the requirements of § 70.11 of this chapter.

(c) *Revisions.* Within 90 days of any State amendment, repeal or revision of any State rule, program, or other authorities supporting an approval under this subpart, a State must provide the Administrator with a copy of the revised authorities and meet the requirements of either paragraph (c) (1) or (2) of this section.

(1) (i) The State shall provide the Administrator with a written finding by the State Attorney General (or for a local agency, the General Counsel with full authority to represent the local agency) that the State's revised legal authorities are adequate to continue to implement and to enforce all previously approved State rules and the approved State program (as applicable) and adequate to continue to assure compliance by all sources within the State with approved rules, the approved program (as applicable) and each applicable section 112 rule, emission standard or requirement.

(ii) If the Administrator determines that the written finding is not adequate, the State shall request approval of the revised rule or program according to the provisions of paragraph (c)(2) of this section.

(2) The State shall request approval under this subpart of a revised rule or program.

(i) If the Administrator approves the revised rule or program, the revised rule or program will replace a rule or program previously approved.

(ii) If the Administrator disapproves the revised rule or program, the Administrator will initiate procedures under § 63.96 to withdraw approval of any previously approved rule or program that may be affected by the revised authorities.

(iii) Until such time as the Administrator approves or withdraws approval of a revised rule or program, the previously approved rule or program remains Federally enforceable.

§ 63.92 Approval of a State rule that adjusts a section 112 rule.

Under this section a State may seek approval of a State rule with specific adjustments to a Federal section 112 rule.

(a) *Approval process.* (1) If the Administrator finds that the criteria of this section and the criteria of § 63.91 are met, the State rule will be approved by the Administrator, published in the **Federal Register** and incorporated, directly or by reference, in the appropriate subpart of this part 63, without additional notice and opportunity for comment. Rules approved under § 63.95 will be incorporated pursuant to requirements under section 112(r).

(2) If the Administrator finds that any one of the State adjustments to the Federal rule is in any way ambiguous with respect to the stringency of applicability, the stringency of the level of control, or the stringency of the compliance and enforcement measures for any affected source or emission point, the Administrator will disapprove the State rule.

(3) Within 90 days of receiving a complete request for approval under this section, the Administrator will

either approve or disapprove the State rule.

(b) *Criteria for approval.* Any request for approval under this section shall meet all of the criteria of this section and § 63.91 before approval. The State shall provide the Administrator with:

(1) A demonstration that the public within the State has had adequate notice and opportunity to submit written comment on the State rule; and

(2) A demonstration that each State adjustment to the Federal rule individually results in requirements that:

(i) Are unequivocally no less stringent than the otherwise applicable Federal rule with respect to applicability;

(ii) Are unequivocally no less stringent than the otherwise applicable Federal rule with respect to level of control for each affected source and emission point;

(iii) Are unequivocally no less stringent than the otherwise applicable Federal rule with respect to compliance and enforcement measures for each affected source and emission point; and

(iv) Assure compliance by every affected source no later than would be required by the otherwise applicable Federal rule.

(3) State adjustments to Federal section 112 rules which may be part of an approved rule under this section are:

(i) Lowering a required emission rate or de minimis level;

(ii) Adding a design, work practice, operational standard, emission rate or other such requirement;

(iii) Increasing a required control efficiency;

(iv) Increasing the frequency of required reporting, testing, sampling or monitoring;

(v) Adding to the amount of information required for records or reports;

(vi) Decreasing the amount of time to come into compliance;

(vii) Subjecting additional emission points or sources within a source category to control requirements; and

(viii) Any adjustments allowed in a specific section 112 rule.

§ 63.93 Approval of State authorities that substitute for a section 112 rule.

Under this section a State may seek approval of State authorities which differ in form from a Federal section 112 rule for which they would substitute, such that the State authorities do not qualify for approval under § 63.92.

(a) *Approval process.* (1) Within 45 days after receipt of a complete request for approval under this section, the Administrator will seek public comment for a minimum of 30 days on the State request for approval. The Administrator will require that comments be submitted concurrently to the State.

(2) If, after review of public comments and any State responses to comments submitted to the Administrator within 30 days of the close of the public comment period, the Administrator finds that the criteria of this section and the criteria of § 63.91 are met, the State authorities will be approved by the Administrator under this section and the approved authorities will be published in the **Federal Register** and incorporated directly or by reference, in the appropriate subpart of part 63. Authorities approved under § 63.95 will be incorporated pursuant to requirements under section 112(r).

(3) If the Administrator finds that any of the requirements of this section or § 63.91 have not been met, the Administrator will disapprove the State authorities.

(4) Authorities submitted for approval under this section shall include either:

(i) State rules or other requirements enforceable under State law that would substitute for a section 112 rule; or

(ii) (A) The specific permit terms and conditions for the source or set of sources in the source category for which the State is requesting approval under this section, including control requirements and compliance and enforcement measures, that would substitute for the permit terms and conditions imposed by the otherwise applicable section 112 rule for such source or set of sources.

(B) The Administrator will approve authorities specified under paragraph (a)(4)(ii)(A) of this section only when the State submitting the request already has an approved program under § 63.94, the Federal standard for the source category has been promulgated under section 112(h), and the Administrator has not determined the work practice, design, equipment or operational requirements submitted by the State to be inadequate under the provisions of the Federal standard.

(5) Within 180 days of receiving a complete request for approval under this section, the Administrator will either approve or disapprove the State request.

(b) *Criteria for approval.* Any request for approval under this section shall meet all of the criteria of this section and § 63.91 before approval. The State shall provide the Administrator with detailed documentation that the State authorities contain or demonstrate:

(1) Applicability criteria that are no less stringent than those in the respective Federal rule;

(2) Levels of control and compliance and enforcement measures that result in emission reductions from each affected source or accidental release prevention program requirements for each affected source that are no less stringent than would result from the otherwise applicable Federal rule;

(3) A compliance schedule that assures that each affected source is in compliance no later than would be required by the otherwise applicable Federal rule; and

(4) At a minimum, the approved State authorities must include the following compliance and enforcement measures. (For authorities addressing the accidental release prevention program, minimum compliance and enforcement provisions are described in § 63.95.)

(i) The approved authorities must include a method for determining compliance.

(ii) If a standard in the approved authorities is not instantaneous, a maximum averaging time must be established.

(iii) The authorities must establish an obligation to periodically monitor or test for compliance using the method established per § 63.93(b)(4)(i) sufficient to yield reliable data that are representative of the source's compliance status.

(iv) The results of all required monitoring or testing must be reported at least every 6 months.

§ 63.94 Approval of a State program that substitutes for section 112 emission standards.

Under this section a State may seek approval of a State program to be implemented and enforced in lieu of specified existing and future Federal emission standards or requirements promulgated under sections 112(d), (f) or (h), for those affected sources permitted by the State under part 70 of this chapter.

(a) *Approval process.* (1) Within 45 days after receipt of a complete request for approval under this section the Administrator will seek public comment for a minimum of 30 days on the State request for approval. The Administrator will require that comments be submitted concurrently to the State.

(2) If, after review of all public comments, and State responses to comments submitted to the Administrator within 30 days of the close of the public comment period, the Administrator finds that the criteria of this section and the criteria of § 63.91 are met, the State program will be approved by the Administrator. The approved State commitment made under paragraph (b)(2) of this section

and reference to all documents submitted under § 63.91(b)(2) will be published in the **Federal Register** and incorporated directly or by reference in the appropriate subpart of part 63.

(3) If the Administrator finds that any of the criteria of this section or § 63.91 have not been met, the Administrator will disapprove the State program.

(4) Within 180 days of receiving a complete request for approval under this section, the Administrator will either approve or disapprove the State request.

(b) *Criteria for approval.* Any request for approval under this section shall meet all of the criteria of this section and § 63.91 before approval. The State shall provide the Administrator with:

(1) A reference to all specific sources or source categories listed pursuant to subsection 112(c) for which the State is seeking authority to implement and enforce standards or requirements under this section;

(2) A legally binding commitment adopted through State law that, after approval:

(i) For each source subject to Federal section 112 emission standards or requirements for which approval is sought, part 70 permits shall be issued or revised by the State in accordance with procedures established in part 70 of this chapter and in accordance with the schedule submitted under § 63.91(b)(5) assuring expeditious compliance by all sources; and

(ii) All such issued or revised part 70 permits shall contain conditions that:

(A) Reflect applicability criteria no less stringent than those in the otherwise applicable Federal standards or requirements;

(B) Require levels of control for each affected source and emission point no less stringent than those contained in the otherwise applicable Federal standards or requirements;

(C) Require compliance and enforcement measures for each source and emission point no less stringent than those in the otherwise applicable Federal standards or requirements;

(D) Express levels of control and compliance and enforcement measures in the same form and units of measure as the otherwise applicable Federal standard or requirement;

(E) Assure compliance by each affected source no later than would be required by the otherwise applicable Federal standard or requirement.

§ 63.95 Additional approval criteria for accidental release prevention programs.

(a) A State submission for approval of an Accidental Release Prevention (ARP) program must meet the criteria and be in accordance with the procedures of this section, § 63.91, and, where appropriate, either § 63.92 or § 63.93.

(b) The State ARP program application shall contain the following elements consistent with the procedures in § 63.91 and, where appropriate, either § 63.92 or § 63.93:

(1) A demonstration of the State's authority and resources to implement and enforce regulations which are at least as stringent as regulations promulgated under section 112(r) that specify substances, related thresholds and a risk management program,

(2) Procedures for:

(i) Registration of stationary sources, as defined in section 112(r)(2)(C) of the Act, which clearly identifies the State entity to receive the registration;

(ii) Receiving and reviewing risk management plans;

(iii) Making available to the public any risk management plan submitted to the State pursuant to provisions specified in section 112(r) which are consistent with section 114(c) of the Act; and

(iv) Providing technical assistance to subject sources, including small businesses;

(3) A demonstration of the State's authority to enforce all accidental release prevention requirements including a risk management plan auditing strategy;

(4) A description of the coordination mechanisms the State implementing agency will use with:

(i) The Chemical Safety and Hazard Investigation Board, particularly during accident investigation; and

(ii) The State Emergency Response Commission, and the Local Emergency Planning Committees; and

(iii) The air permitting program with respect to sources subject to both section 112(r) of the Act and permit requirements under part 70 of this chapter.

(c) A State may request approval for a complete or partial program. A partial accidental release prevention program must include the core program elements listed in paragraph (b) of this section.

§ 63.96 Review and withdrawal of approval.

(a) *Submission of information for review of approval.* (1) The Administrator may at any time request any of the following information to review the adequacy of implementation and enforcement of an approved rule or program and the State shall provide that information within 45 days of the Administrator's request:

(i) Copies of any State statutes, rules, regulations or other requirements that have amended, repealed or revised the approved State rule or program since approval or since the immediately previous EPA review;

(ii) Information to demonstrate adequate State enforcement and compliance monitoring activities with respect to all approved State rules and with all section 112 rules, emission standards or requirements;

(iii) Information to demonstrate adequate funding, staff, and other resources to implement and enforce the State's approved rule or program;

(iv) A schedule for implementing the State's approved rule or program that assures compliance with all section 112 rules and requirements that the EPA has promulgated since approval or since the immediately previous EPA review,

(v) A list of part 70 or other permits issued, amended, revised, or revoked since approval or since immediately previous EPA review, for sources subject to a State rule or program approved under this subpart.

(vi) A summary of enforcement actions by the State regarding violations of section 112 requirements, including but not limited to administrative orders and judicial and administrative complaints and settlements.

(2) Upon request by the Administrator, the State shall demonstrate that each State rule, emission standard or requirement applied to an individual source is no less stringent as applied than the otherwise applicable Federal rule, emission standard or requirement.

(b) *Withdrawal of approval of a state rule or program.* (1) If the Administrator has reason to believe that a State is not adequately implementing or enforcing an approved rule or program according to the criteria of this section or that an approved rule or program is not as stringent as the otherwise applicable Federal rule, emission standard or requirements, the Administrator will so inform the State in writing and will identify the reasons why the Administrator believes that the State's rule or program is not adequate. The State shall then initiate action to correct the deficiencies identified by the Administrator and shall inform the Administrator of the actions it has initiated and completed. If the Administrator determines that the State's actions are not adequate to correct the deficiencies, the Administrator will notify the State that the Administrator intends to withdraw approval and will hold a public hearing and seek public comment on the proposed withdrawal of approval. The Administrator will require that comments be submitted concurrently to

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the State. Upon notification of the intent to withdraw, the State will notify all sources subject to the relevant approved rule or program that withdrawal proceedings have been initiated.

(2) Based on any public comment received and any response to that comment by the State, the Administrator will notify the State of any changes in identified deficiencies or actions needed to correct identified deficiencies. If the State does not correct the identified deficiencies within 90 days after receiving revised notice of deficiencies, the Administrator shall withdraw approval of the State's rule or program upon a determination that:

(i) The State no longer has adequate authorities to assure compliance or resources to implement and enforce the approved rule or program, or

(ii) The State is not adequately implementing or enforcing the approved rule or program, or

(iii) An approved rule or program is not as stringent as the otherwise applicable Federal rule, emission standard or requirement.

(3) The Administrator may withdraw approval for part of a rule, for a rule, for part of a program, or for an entire program.

(4) Any State rule, program or portion of a State rule or program for which approval is withdrawn is no longer Federally enforceable. The Federal rule, emission standard or requirement that would have been applicable in the absence of approval under this subpart will be the federally enforceable rule, emission standard or requirement.

(i) Upon withdrawal of approval, the Administrator will publish an expeditious schedule for sources subject to the previously approved State rule or program to come into compliance with applicable Federal requirements. Such schedule shall include interim emission limits where appropriate. During this transition, sources must be operated in a manner consistent with good air pollution control practices for minimizing emissions.

(ii) Upon withdrawal, the State shall reopen, under the provisions of § 70.7(f) of this chapter, the part 70 permit of each source subject to the previously approved rules or programs in order to assure compliance through the permit with the applicable requirements for each source.

(iii) If the Administrator withdraws approval of State rules applicable to sources that are not subject to part 70 permits, the applicable State rules are no longer Federally enforceable.

(iv) If the Administrator withdraws approval of a portion of a State rule or program, other approved portions of the State rule or program that are not withdrawn shall remain in effect.

(v) Any applicable Federal emission standard or requirement shall remain enforceable by the EPA as specified in section 112(l)(7) of the Act.

(5) If a rule approved under § 63.93 is withdrawn under the provisions of § 63.96(b)(2) (i) or (ii), and, at the time of withdrawal, the Administrator finds the rule to be no less stringent than the otherwise applicable Federal requirement, the Administrator will grant equivalency to the previously approved State rule under the appropriate provisions of this part.

(6) A State may submit a new rule, program or portion of a rule or program for approval after the Administrator has withdrawn approval of the State's rule, program or portion of a rule or program. The Administrator will determine whether the new rule or program or portion of a rule or program is approvable according to the criteria and procedures of § 63.91 and either of § 63.92, § 63.93 or § 63.94.

(7) A State may voluntarily withdraw from an approved State rule, program or portion of a rule or program by notifying the EPA and all affected sources subject to the rule or program and providing notice and opportunity for comment to the public within the State.

(i) Upon voluntary withdrawal by a State, the Administrator will publish a timetable for sources subject to the previously approved State rule or program to come into compliance with applicable Federal requirements.

(ii) Upon voluntary withdrawal, the State must reopen and revise the part 70 permits of all sources affected by the withdrawal as provided for in this section and § 70.7(f), and the Federal rule, emission standard, or requirement that would have been applicable in the absence of approval under this subpart will become the applicable requirement for the source.

(iii) Any applicable Federal section 112 rule, emission standard or requirement shall remain enforceable by the EPA as specified in section 112(l)(7) of the Act.

(iv) Voluntary withdrawal shall not be effective sooner than 180 days after the State notifies the EPA of its intent to voluntarily withdraw.

[FR Doc. 93-28821 Filed 11-24-93; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93-139; RM-8211, RM-8307]

Radio Broadcasting Services; Anchorage and Seward, AK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 276C1 for Channel 275C2 at Anchorage, Alaska, and modifies the license for Station KXDZ (FM) to specify operation on the higher powered channel, in response to a request filed by American Radio Brokers, Inc. Additionally, Channel 290A is substituted for vacant Channel 276A at Seward, Alaska, to accommodate the modification of Station KXDZ (FM) at Anchorage, in response to a counterproposal filed by American Radio Brokers, Inc. (RM-8307). See 58 FR 32338 (June 9, 1993). Coordinates for Channel 276C1 at Anchorage are 61-09-58 and 149-49-34. Coordinates for Channel 290A at Seward are 60-06-15 and 149-26-32. With this action, the proceeding is terminated.

EFFECTIVE DATE: December 27, 1993

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93-139, adopted October 29, 1993, and released November 12, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, located at 1919 M Street NW., room 246, or 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.